

New Directions

Recommendations for Planning, Zoning, and Subdivision Law in Michigan

March 2004

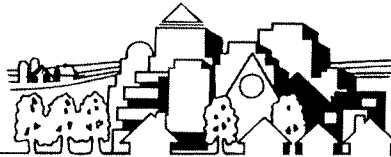


Michigan Society of Planning

"Making Great Places Happen"

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Michigan Society of Planning

The Michigan Society of Planning (MSP) is a 501 c 3 organization, dedicated to promoting sound community planning that benefits the residents of Michigan. MSP was established in 1945 to achieve a desired quality of life through comprehensive community planning that includes opportunities for a variety of lifestyles and housing, employment, commercial activities, and cultural and recreational amenities.

Today, the Society has a membership of more than 5,000, and eighty percent of our members are citizens appointed to planning commissions and zoning boards of appeal. Some 1,000 of our members are professional planners and professionals from ancillary fields such as architecture, landscape architecture, engineering, law, the private development community, and others. We have been in the business of educating and training citizen and professional planners for almost 60 years.

The Michigan Society of Planning is, operationally and organizationally, the largest state chapter of the American Planning Association (APA), which is recognized internationally as the premier organization dedicated to urban and regional planning. As the largest APA Chapter, the Society is backed by the strength of our members, and the extensive resources of APA. This enables the Society to expand its role as an advocate for best planning practices by advancing new ways of thinking and doing things in Michigan. As the Michigan Society of Planning increases its visibility and influence, we advance the credibility of the planning profession by transcending current approaches to planning and land use. We provide new models and tools that will result in improved development patterns that conserve land and resources, build a vital economy, and provide sustainability for the future.

Today, the Michigan Society of Planning is positioned as the State's leading planning organization. We continue to provide cutting edge educational programs; our publications help planners make better decisions; our presence in Lansing as an advocate for improved planning practices is helping to form new legislation that will change the prevailing land development patterns and enhance both the built and natural environments. We have initiated research projects and best practices publications through increased grant funding. We are making a difference.

We are especially grateful to the W. K. Kellogg Foundation, through the People and Land (PAL) grant program, for their continued support of land use issues through monetary grants to MSP. As a direct result of their financial commitment, the Society completed *New Directions: Recommendations for Planning, Zoning and Subdivision Law in Michigan*. This in-depth study of Michigan's planning laws could become the basis for real statutory change.

"Making Great Places Happen"

Acknowledgements

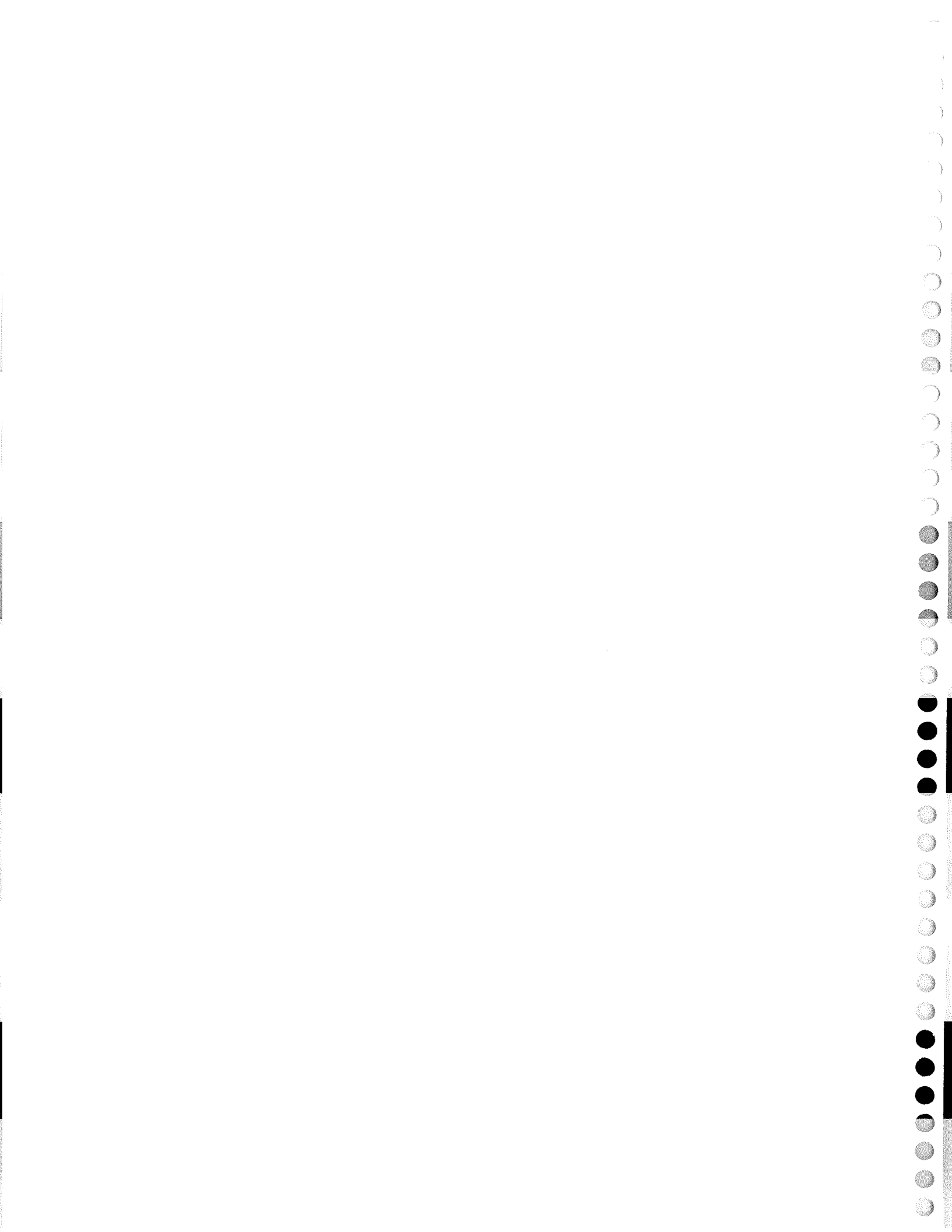
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APA thanks: David Downey, CAE, Executive Director, and his staff, particularly Andrea Brown, AICP, and Amy Jordan for their hard work in getting this project completed in a relatively short time frame; Mark Wyckoff, FAICP, for his insight and support throughout as well as his staff at the Planning and Zoning Center; and the members of the Michigan Land Use Leadership Council for the opportunity to address them in April 2003 and for their careful consideration of the recommendations in this report.

Table of Contents

Executive Summary	1
Chapter 1: Introduction	5
Chapter 2: Analysis and Interpretations of Current Law	9
2.1 Michigan's Planning Statutes	9
2.2 Michigan's Zoning Statutes	11
2.3 Official Map, Subdivision Regulations, and The Land Division Act	17
2.4 Interpretation of Statutes; Court Decisions; Attorney General Opinions	19
Chapter 3: Small Group Interviews and Other Input	25
3.1 Strengths of Existing Planning and Zoning Statutes	25
3.2 Weaknesses of the Existing State Laws	26
3.3 Major Issues Facing Communities	27
3.4 What to Fix	31
3.5 Combining Statutes	35
3.6 The Desirability of State-Level Planning Goals	35
3.7 Affordable Housing	38
3.8 Required Training	38
Chapter 4: Recommendations of Previous Studies	39
4.1 Managing Growth: New Directions Toward Integrated Land Use Planning	39
4.2 Michigan's Environment and Relative Risk	39
4.3 Task Force Report on Land Use	39
4.4 Policy Recommendations and Options for the Future Growth of Michigan Agriculture: A Report to Governor John Engler	41
4.5 Institutional Structure for Land Use Decision Making in Michigan	42
4.6 Toward Integrated Land Use	44
4.7 Linking Brownfields Redevelopment and Greenfields Protections for Sustainable Development	44
4.8 Coordinated Planning Act	45
Chapter 5: Report Recommendations	49
5.1 The State Role in Planning	49
5.2 Consolidation of Laws	50
5.3 Planning for Cities and Villages, Townships, Counties, and Regions	50
5.4 City and Village, Township, and County Zoning	54
5.5 Official Map	59
5.6 Land Division and Subdivision	59
5.7 Paying for Growth	60
5.8 Dispute Resolution, Mediation, and Administrative & Judicial Review	62
5.9 Training of Planning Officials	63
Bibliography	65
Appendix A: Small Group Interview Participants	69
Appendix B: Focus Group Questionnaire	71
Appendix C: Advisory Group	77



Executive Summary

This report was prepared by the Research Department of the American Planning Association (APA) in Chicago for the Michigan Society of Planning (MSP). It was funded by a grant from the People and Land (PAL) program of the Kellogg Foundation. The report is an assessment of the need for statutory changes to the Michigan Compiled Laws (MCL) regarding planning, zoning, and land subdivision. Its goals are to increase the public's understanding of land-use planning, to aid citizens, elected and appointed officials, and planners in the development of land use policies, and to remove barriers to positive change in the area of land-use planning and regulation.

This study builds upon numerous other substantive studies of Michigan planning laws that have been conducted in the last decade. The work was also guided by an advisory group comprised of members of the Michigan Society of Planning. The advisory group members identified the major issues in need of analysis and statutory reform and also provided input on the memo to small group interview participants that contained questions about problems and potential changes to the existing MCL.

The timing of this project coincided with the formation and work of the Michigan Land Use Leadership Council appointed by Governor Jennifer Granholm. MSP and APA hope that this report can supplement the recommendations of that group contained in its August 15, 2003, report to the Governor and Legislature.

There are five sections in this report. Section 1 is an overview of the project goals, the specific tasks that were undertaken, and the research process that was used. It contains a description of APA's *Growing SmartSM Legislative Guidebook*, the product of a seven-year effort to draft and implement a new generation of model planning and zoning statutes for the U.S. Section 2 is a highly detailed overview of the current Michigan statutes governing planning and land use at the municipal, township, county, and state level. It also digests court decisions, opinions of the attorney general, and interpretations of statutes that affect how Michigan communities plan for and manage growth. Section 3 summarizes the comments provided at six small-group meetings conducted by MSP and APA in April and May 2003, as well as written comments provided directly to MSP and APA by members of the advisory board, people who were invited to the interviews but were unable to attend, and several people who attended the meetings and sent in additional comments afterward. Section 4 reviews the recommendations of eight major studies and reports on Michigan planning and zoning laws prepared between 1992 and the present. Section 5 sets forth recommended changes in MCL provisions affecting planning and land-use control.

The recommendations are presented in nine categories:

- The State Role
- Consolidation of Planning Laws
- Planning for Cities and Villages, Townships, Counties, and Regions
- City and Village, Township, and County Zoning
- Official Map

- Land Division and Subdivision
- Paying for Growth
- Mediation and Administrative and Judicial Review
- Training of Planning Officials

The approach that this report takes is to recommend numerous procedural and substantive changes to the existing statutes rather than call for a complete overhaul of the existing system for planning and land development regulation. The overarching theme of the following recommendations is the need for greater consistency and, in some cases, uniformity of definitions, zoning procedures, and public notice provisions in varying statutes for cities and villages, townships, and counties. The recommendations also attempt to eliminate countervailing provisions that undermine the intent of certain statutes in furtherance of others, such as the widespread use of the Land Division Act as an end run around a complex and cumbersome subdivision review process. There is a detailed recommendation on what an impact fee statute should contain along with suggested safeguards to ensure that impact fee ordinances are applied fairly.

The recommendations regarding judicial review call for consideration of mediated development agreements as a solution to the procedural problems that have emerged in the wake of the Michigan Supreme Court's *Paragon v. Novi* decision. The recommendations also address a potential role for the state in formulating statewide planning goals.

Many innovative and good faith efforts are underway by Michigan cities, townships, and counties to manage growth and change effectively in times of economic uncertainty, upheaval in agricultural industry, and urban sprawl, despite steady or even declining population in the state. Moreover, there is tremendous, sustained interest among elected officials, citizens, planners and planning officials, transportation interests, builders and developers, farmers, environmentalists, and many others in the state to do things better. These groups want local governments to have the tools they need to plan for their futures in a way that is most beneficial to each region of the state and to the state as a whole. MSP and APA hope that this report builds upon the solid foundation for planning already established in Michigan.

RECOMMENDATIONS ON THE STATE ROLE IN PLANNING

- (1) Formulate and adopt a state plan that is a direction-setting document for the state and other governmental units.

RECOMMENDATIONS ON CONSOLIDATION OF LAWS

- (2) Consolidate the planning and zoning acts.

RECOMMENDATIONS ON PLANNING FOR CITIES AND VILLAGES, TOWNSHIPS, COUNTIES, AND REGIONS

- (3) Broaden the degree of representation on planning commissions and create consistent requirements for commission membership.

(4) Provide common and contemporary definitions of a local comprehensive plan and a regional plan.

(5) Incorporate a required agricultural element in the comprehensive plan definition and require such planning for agricultural areas outside of municipalities.

(6) Require local units of government that receive comments on proposed plans from adjoining jurisdictions and the state to incorporate those comments into an appendix to the plan and to respond to them in some manner.

(7) Require a process of public notice and involvement in the preparation of regional plans and require such plans to be updated on a regular basis; describe the effect and relationship of regional plans to local comprehensive plans.

(8) If referenda are to be used at all, replace the provision allowing a zoning text or map change to be put up for referendum with a provision to allow, but not require, an entire comprehensive plan or amendment to be subject to referendum.

(9) Establish a capital improvement program requirement for municipalities, townships, and counties that is related to the local comprehensive plan.

RECOMMENDATIONS FOR CITY AND VILLAGE, TOWNSHIP, AND COUNTY ZONING

(10) Provide a set of minimum content requirements and definitions for zoning ordinances to ensure clarity in statewide application and modify purpose language.

(11) Establish a process and a set of criteria for determining consistency between the zoning ordinance and the comprehensive plan.

(12) Standardize public notice and adjoining property owner notice provisions for all land-use decisions and authorize Internet publication of notices.

(13) Require each local government to establish a unified permit review process under state guidelines. Under such provisions, each local government would adopt its own permit review ordinance that states clearly the procedure it will employ in reviewing applications for all classes of development permits and that specifies time limits on permit reviews.

(14) Establish a uniform procedure for enforcement of permits and land development regulations.

(15) Authorize amortization of nonconforming uses in the zoning act and establish a system of inventorying and certifying such uses.

(16) Provide authority for incentive zoning and overlay zoning

- (17) Provide authority for transfer of development rights.
- (18) Authorize the creation of the position of hearing examiner to improve the efficiency and impartiality of land-use hearings.
- (19) Establish provisions for vested rights.
- (20) Define “demonstrated need” in MCL 125.227a (counties), MCL 125.592 (cities and villages), and MCL 125.297a (townships).
- (21) Establish a process to balance the needs of individual local governments with those of state agencies and other local governments in the review and approval of projects.

RECOMMENDATION FOR AN OFFICIAL MAP

- (22) Authorize, by new legislation, adoption of official maps by cities and villages, townships, and counties.

RECOMMENDATION ON LAND DIVISION AND SUBDIVISION

- (23) Completely rewrite the Land Division Act and consolidate related provisions from the planning acts.

RECOMMENDATION ON PAYING FOR GROWTH

- (24) Authorize development impact fees for off-site improvements but provide for state certification and periodic review of impact fee ordinances and administration.

**RECOMMENDATION ON DISPUTE RESOLUTION, MEDIATION, AND
ADMINISTRATIVE AND JUDICIAL REVIEW**

- (25) Authorize mediated development agreements as a remedy to be sought before challenging denials of zone changes and other land-use decisions.
- (26) Reevaluate the process for judicial review of land-use decisions and consider a specialized court or a special judge to handle land-use litigation.

RECOMMENDATION ON TRAINING OF PLANNING OFFICIALS

- (27) Require training for planning commission and zoning board of appeals members as a condition of appointment and reappointment, unless specifically exempted by the local legislative body.

PURPOSE

In January 2003, the Michigan Society of Planning (MSP) initiated an eight-month project, the Michigan Land-Use Statutory Reform Initiative, with the American Planning Association's Research Department. The purpose of the project was to assess the need for changes to the Michigan Compiled Laws (MCL) that would improve the state's planning and land-use controls as well as provide a basis for future legislation. The project was to build on numerous reports released by study commissions, task forces, and similar groups over the past decade. The People and Land (PAL) program of the Kellogg Foundation funded this project.

The project goals are to:

- increase the public's understanding of land-use management and its impact on Michigan's environment, economy, and quality of life;
- aid in the development of local and state land-use policies; and
- remove policy barriers that inhibit positive land-use change by identifying specific areas in which the Michigan statutes need to be modified or completely rewritten.

After the project began, Michigan Governor Jennifer Granholm appointed the Michigan Land Use Leadership Council in March 2003. The council was charged with providing recommendations to the governor and the legislature designed to minimize the impact of current land-use trends on Michigan's environment and economy. Consequently, MSP decided to use the project as a way of informing the council's deliberations as well as offering an independent perspective about specific changes that would update the state's planning laws.

The project had the following tasks:

(1) A survey and evaluation of state statutes affecting planning and land development control, and a judicial review of local land-use decisions by the Michigan court system.

An evaluation of the structure, organization, substance, and clarity of existing statutes and an assessment of their regulatory purposes resulted in a digest of relevant statutes and a review of significant court decisions in the past 10 to 15 years that interpreted the statutes. It also resulted in an assessment of law journal articles, state agency studies, proposed (but never enacted) legislation, attorney general opinions, and other literature that describes, critiques, or contains proposals for changes to Michigan's laws.

(2) Small group interviews. Candidates for the interviews were local officials, farmers, environmentalists, planners, homebuilders, developers, and land-use attorneys. The small group interviews were organized and conducted by interest group; the interviews attempted to determine (1) how the state statutes are affecting behavior by local governments, the private sector, and the state, (2) where there are gaps in authority that

should be addressed by new statutes, and (3) other areas of potential concern. For the small group interviews, APA and MSP developed an outline of questions keyed to the statutes and state practice, and provided it to the interviewees beforehand so they could come prepared.

(3) Preparation of a report. This initial report is in draft form and is to be circulated by MSP. The draft report includes the results of tasks (1) and (2), as well as recommendations for change. The recommendations could take the form of either proposals for legislative changes or specific changes to language in the MCL. Some of the recommendations are based on model statutes contained in the American Planning Association's *Growing SmartSM Legislative Guidebook*, 2002 edition, which is APA's compendium of model planning laws, or on existing statutes from other states. MSP created an advisory group within the chapter to critique the report in draft form and to assist in formulating the questionnaire described in task 2.

(4) Public release of report and distribution to state legislators and stakeholder groups. After the draft is reviewed, a news release will be prepared, and a final report will be released to the public and distributed to all state legislators, select gubernatorial staff, and other state officials. There may also be briefings of certain stakeholder groups.

ORGANIZATION OF THE REPORT

This report is divided into five sections. Section 1 covers introductory material, including the objectives of the study and the interests of the MSP. Section 2 digests the state's enabling legislation for regional and local planning and land-use control and incorporates a review of relevant Michigan Supreme Court and Michigan Attorney General decisions. Section 3 summarizes the results of the small group meetings conducted by MSP and APA in April and May 2003. Section 4 reviews the recommendations of a number of previous studies and reports. Section 5 sets forth recommended changes in MCL provisions affecting planning and land-use control.

INTEREST OF MICHIGAN SOCIETY OF PLANNING

The Michigan Society of Planning is the state chapter of the American Planning Association. With approximately 5,000 members, including planning officials, professional planners, and citizens interested in planning, MSP exists to ensure that Michigan's communities will be healthy, safe, attractive, and successful places based first and foremost on quality comprehensive planning. MSP has a standing planning law committee that formulated the Coordinated Planning Act considered by the Michigan Legislature in its 2000 and 2001 sessions as HB 6124 and HB 4571. In addition, the MSP Board of Directors has endorsed a set of legislative policies for the 2003-2004 period that can be viewed at <http://www.planningmi.org/>

AMERICAN PLANNING ASSOCIATION GROWING SMARTSM PROJECT; PLANNING STATUTE REFORM CLEARINGHOUSE

The American Planning Association (APA) is a nonprofit organization dedicated to advancing the art, science, and profession of urban, rural, and regional planning throughout the U.S. and abroad. APA encourages planning that contributes to the public

well being by developing communities and environments that more effectively meet the needs of all people. APA's 34,000 members include professional planners, planning commissioners, elected officials, and citizens who are interested in planning. The association has offices in Washington, D.C., and Chicago, where its 18-person Research Department is located.

The Research Department, established in 1949, provides subscription-based and contract research services. It operates the Planning Advisory Service, which answers inquiries from the approximately 1,700 public- and private-sector subscribers, and publishes the Planning Advisory Report series and the monthly *PAS Memo*. Other Research Department publications include *Zoning News* and *Land Use Law & Zoning Digest*, a monthly review of planning case law and commentary. The Research Department houses the 5,000-volume Merriam Center library, a specialized collection of books on planning topics. Finally, APA conducts contract research for a variety of public and private clients, including federal and state agencies, nonprofit organizations, and foundations. This has included planning statute reform studies for Illinois, Montana, Ohio, and the Czech Republic.

The Growing SmartSM project was APA's multiyear effort to draft the next generation of model planning and zoning enabling legislation for the U.S. and to build a capacity within APA to assist states and interest groups in the use of the model statutes and related information. Begun in 1994, the project resulted in the release of the *Growing SmartSM Legislative Guidebook*, 2002 edition, which contains the model statutes with supporting commentary. The *Guidebook* is intended to replace the *Standard State Zoning Enabling Act* and the *Standard City Planning Enabling Act* drafted in the 1920s by an advisory committee in the U.S. Department of Commerce appointed by then Commerce Secretary (and later President) Herbert Hoover. These two model acts formed the basis for, or influenced the drafting of, the enabling legislation for many states, including Michigan. A *User Manual*, a diagnostic tool intended to help decision makers evaluate the need for statutory reform, accompanies the *Guidebook*.

To date, language from the *Legislative Guidebook* has been incorporated into bills and laws in 15 states. States that have enacted new statutes based on the *Guidebook* include Arizona, Illinois, New Hampshire, Tennessee, and Wisconsin.

To assist in the ongoing reform of planning statutes, APA established the Planning Statute Reform Clearinghouse (PSRC). PSRC is a central repository of information and advice helpful to those interested in modernizing the state statutes that govern planning, zoning, subdivision control, and related tools. Its principal target audiences include APA Chapters, state legislators and their staffs, governors and their staffs, state legislative research bureaus, and others interested in advancing planning statute reform.



Chapter 2: Analysis and Interpretations of Current Law

This section digests enabling planning and zoning enabling legislation for counties, municipalities, and townships. The analysis identifies where there are significant differences among the statutes and includes a discussion of pertinent state court cases and attorney general opinions that interpret the statutes.

2.1 MICHIGAN'S PLANNING STATUTES

COUNTY PLANNING

The county planning act (MCL 101.01 et seq.) authorizes a county to “make, adopt, amend, extend, add to, or carry out a county plan” and to establish a county planning commission consisting of between five and 11 members. MCL 125.102 calls for the planning commission to be representative of important segments of the county, including the “major interests...such as agriculture, recreation, education, government, transportation, industry, and commerce.” The county board of supervisors is charged with establishing “the basis for representative membership on the commission.” While the statute addresses major business interests, it does not address whether there should be a balance between owners and renters. Although the statutes do not describe the meaning of the terms, a county board may designate a county planning commission to engage in “metropolitan and regional planning” (MCL 125.104a (1)).

The county plan is described in MCL 125.104 and may include incorporated areas. Under the definition, the county plan “shall address land use issues and may project 20 years or more into the future.” The plan must include a land-use plan and program that “consists in part of a classification and allocation of land” for a variety of purposes. Other elements include those dealing with transportation and public utilities, rehabilitation or redevelopment of blighted areas, and implementation. Of the three planning acts, the county act is the only one clearly stating that the plan is to contain future land-use maps. MCL 125.104(2)(a) provides that, if a county has not adopted a zoning ordinance under the county zoning enabling act, “the land use plan and program may be a general plan with generalized future land use maps.”

The county planning commission, like township and municipal planning commissions, is obligated to follow a notice procedure before it prepares a plan and before it adopts a plan it has prepared. The procedure, under MCL 125.104b and 125.104c, requires notice of affected municipal and regional planning commissions, registered public utilities, railroad companies, and other governmental entities. Under this procedure, which became effective in January 2002, notified parties may submit written comments on plans, although there is no obligation that the planning commission respond to the comments or that the comments accompany the plan.

Once the county planning commission adopts the plan, an optional procedure under MCL 125.105(3) to (5) allows the county board to adopt the plan itself if it so elects. If the county board has objections to the plan, the county planning commission must “revise the plan so as to address those objections,” and the process must be repeated until the county

board adopts an approved plan. Similar provisions exist for municipal and township planning commissions.

MUNICIPAL PLANNING

The municipal planning act contains a similar structure for establishing a planning commission and adopting a plan. In contrast to the county act, MCL 125.33(1) calls for the municipal planning commission's membership to consist of nine members "who shall represent insofar as is possible different professions or occupations," but the professions or occupations are not identified. The plan is called the "master plan," and the enabling legislation requires it to include "a zoning plan for the control of the height, area, bulk, location, and use of buildings and premises" (MCL 125.36(4)(d)). The municipal planning commission, in addition to its other powers, may have all of the powers of a zoning commission, which is charged with developing a zoning plan for the municipality (MCL 125.42).

MCL 125.39 requires the municipal planning commission to annually prepare a six-year program of public structures and improvements, which is typically known as a capital improvement program. While it is desirable that such a program be prepared, it is not clear whether municipal planning commissions are doing this because data are not available. Moreover, the program does not seem to be connected to the annual capital budgeting process of the municipality, which is the responsibility of the chief executive (the city manager or mayor) and legislative body. By contrast, there is no similar requirement for county planning commissions, and township planning commissions are simply enabled through a one-line statement with no detail whatsoever (MCL 125.330(2)).

TOWNSHIP PLANNING

In contrast to membership requirements for county and municipal planning commissions, township planning commission members must, under MCL 125.324 (1), be "qualified electors and property owners in the township," which means renters and those who otherwise do not own property, such as sons and daughters of property owners who are residents, cannot sit on a commission. The chief responsibility of the commission is to formulate a "basic plan," the MCL's term for a comprehensive or master plan (MCL 125.321(a)).

SHARED REQUIREMENTS

Important responsibilities of the county, municipal, and township planning commissions are "to promote public interest in and understanding of the plan" and to distribute copies of the plan and related planning reports (MCL 125.06(1), MCL 125.41, MCL 125.329(4)). When duly authorized by the local legislative body, commission members may attend conferences and meetings dealing with planning problems and techniques, and, for county and municipal commissioners, any hearings on pending planning legislation (MCL 125.06(1), MCL 125.41, MCL 125.324(4)). Planning commissioners, except for ex officio members, may also receive compensation for service, and mileage (MCL 125.102, MCL 125.33(3), MCL 125.324(4)).

The three acts all contain a provision that “[a]t least every 5 years after adoption of the plan, the planning commission shall review the plan and determine whether to commence the procedure to amend the plan or adopt a new plan” (MCL 125.105(7), MCL 125.38a(2), MCL 125.329 (2)). The problem with this language is that it does not ensure that, at some point, a plan will actually be updated, or that the local government will make the resources available to the planning commission to do so. While there may be debate as to whether a plan should be evaluated every five years, depending on the level of development activity, there is no question that a community should revise a plan once a decade, after new census data become available.

REGIONAL PLANNING

The regional planning act is skeletal. A regional planning commission may be created by resolution of two or more legislative bodies of any local government units desiring a regional planning commission (MCL 125.12), and the boundaries may either include all or a portion of the local governments (MCL 125.13). The regional planning act does not identify who is to serve as the representative of the each local government on the commission or describe a structure of a commission, other than to mandate that the commission shall elect its own chairman, adopt its own rules of procedure, and may create and fill such other offices as appropriate (MCL 125.15). It may employ a director and any employees it deems necessary (MCL 125.16). A commission has the authority to conduct studies and to make and adopt, by resolution, a plan or portion of the plan or portion of a plan for the development of the region (MCL 125.19). The regional planning act, however, does not require plans so prepared to be subject to a public hearing or public notice, nor does the act describe what kinds of documents would constitute an adequate plan and how often such plans should be revisited and revised. Whether they are active participants in the work of the regional planning commission or not, local governments may adopt all or any portion of the plans prepared and adopted by the regional planning commission by following the procedures specified by act of the local legislative body or by local charter for the adoption of the official master plan (MCL 125.21).

2.2 MICHIGAN’S ZONING STATUTES

COUNTY ZONING

Like the local planning acts, the zoning acts have nearly identical provisions in terms of scope, procedure, and substance. MCL 125.201(1) authorizes a county board of commissioners to provide by zoning ordinance “the establishment of land development regulations and districts in the portions of counties outside the limits of cities and villages which regulate the uses of land.” The purposes for which zoning ordinances may be adopted include:

to meet the needs of the state’s citizens for food, fiber, energy, and other natural resources, places of residence, recreation, appropriate locations, and relationships; to limit the inappropriate congestion of population and the overcrowding of land, transportation systems, and other public facilities; to facilitate adequate and efficient transportation systems, sewage disposal, and

water, energy, education, recreation, and other public service and facility needs; and to promote public health, safety, and welfare. (MCL 125.201(1))

What is notable about this purpose language is its clear emphasis on using zoning to meet the needs of the state's citizens.

The zoning act contains a number of exemptions from or limitations on local control. A county has no jurisdiction over the drilling, completion, or operation of an oil or gas well; these are under the supervision of the state supervisor of wells; in addition, a zoning ordinance is subject to the state electric transmission line certification act (MCL 125.201, citing MCL 460.561 et seq.).

The zoning acts contain a series of requirements for uses for which it must provide. A zoning ordinance must provide for a home occupation to give instruction in a craft or fine art within the residence, although the ordinance may regulate noise, traffic, hours of operation, or other conditions of such uses (MCL 125.201a). A state-licensed residential facility providing resident services for six or fewer persons under 24-hour supervision or care is to be treated as a residential use and must not be subject to a special use or conditional use permit (MCL 125.216a); the state licensing agency must notify the county at least 45 days prior to the licensing in order to review the number of existing or proposed similar state-licensed residential facilities whose property lines are within a 1,500-foot radius of the proposed facility; and the county may in turn notify residents whose property lines are within the same 1,500-foot radius. The state licensing facility may not approve a facility when another is within 1,500 feet, unless permitted by a local zoning ordinance, or when the issuance of the license "would substantially contribute to an excessive concentration of state licensed residential facilities within the county" (MCL 125.216a (4)).

Under MCL 125.227a, a zoning ordinance "shall not have the effect of totally prohibiting the establishment of a land use within a county in the presence of demonstrated need for that land use within either the county or surrounding area within the state, unless there is no location within the county where the use may be appropriately located, or unless the use is unlawful."

A zoning ordinance may be formulated at the initiative of the board of county commissioners, or by the board upon receipt of a petition containing a certain number of signatures of registered voters based on a percentage of the total vote cast in the last generational election. The board then must vote whether to initiate a zoning ordinance. If the majority of the county board votes in favor, the process for formulating a zoning ordinance begins.

The county board must appoint a zoning commission to formulate the zoning ordinance. The zoning commission must base the ordinance on a plan designed to fulfill certain purposes listed under MCL 125.203, which are nearly the same purposes as those described in MCL 125.201(1). This plan does not appear to be the same plan as the county plan described under MCL 125.104.

The zoning ordinance “shall be made with reasonable consideration, among other things, to the character of each district, its peculiar suitability to particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development” (MCL 125.203). Under MCL 125.106(2), the county commission may transfer to the county planning commission all the powers, duties, and responsibilities of the “zoning board” responsible for completing the zoning plan. While the phrase “zoning board” could be construed to mean the zoning board of appeals, this same section also refers to the “planning commission [having] been granted the powers of the zoning commission.” Further, the section provides that in a county where the planning commission “has been granted the powers of the zoning commission,” one member of the planning commission shall be designated a member of the zoning board of appeals. Nonetheless, this ambiguity about what body can constitute the “zoning board”—the zoning commission or the planning commission—needs to be clarified.

Under MCL 125.211, once the county board of commissioners adopts the zoning ordinance, the ordinance must be submitted to the state department of commerce for approval. The statute provides that the department’s approval will be “conclusively presumed” unless the department, within 30 days after receipt, notifies the county clerk of its disapproval. Disapproval “shall be based on noncompliance or conflict with either state or federal law or administrative rule or regulation, or decision of a state or federal court.” There is no similar review for municipal or township ordinances. In addition, the review process does not apply to subsequent amendments.

It is possible under MCL 125.212 to subject the zoning ordinance or subsequent amendments to it to a referendum by the voters of the county outside of the municipal territorial limits. A notice of intent by a registered elector to file a petition triggers the referendum process. The petition itself must be submitted 30 days after the publication of the zoning ordinance. Once a petition is filed in a timely manner, the county clerk determines whether the petition is adequate (viz., whether it contains the required number of signatures). If it does, the zoning ordinance or part of the ordinance is then submitted for referendum. There are similar provisions for townships (MCL 125.282) but not cities and villages in the zoning act.

Board of Zoning Appeals. MCL 125.218 to MCL 125.223 covers the functions of the county board of zoning appeals (BZA). A BZA has the authority to “hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps.” It may “hear and decide appeals from and review an order, requirement, decision, or determination made by an administrative official or body charged with the enactment of the [zoning] ordinance.” It is also empowered “to hear and decide all matters referred to it or upon which it is required to pass [by ordinance].” In addition, appeals may be taken to the board in connection with a special use or planned unit development when such an appeal is authorized by ordinance (MCL 125.220(1)). Finally, it may “grant a variance in the ordinance” (MCL 125.220(2)).

Appeals are taken to the board by “a person aggrieved or by an officer, department, board, or bureau of the township, county, or state,” but the statute does not define “aggrieved” (MCL 125.220(2)). After holding a hearing and giving notice, the BZA “may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made in the premises.” The BZA “shall have all the power of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit.” If there are “practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance,” the BZA, in passing upon appeals, “may vary or modify any of its rules or provisions so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done” (MCL 125.223 (1)). There are no statutory deadlines for giving notice, setting hearings, or making decisions. Nor does the statute require notice to adjoining and neighboring property owners. The term “variance” is not defined.

The BZA may impose conditions with an affirmative decision, and its decision is final. A person “having an interest affected by the zoning ordinance has the right to appeal to circuit court.” The MCL provides a procedure for appeal to circuit court and standards the court must consider in the appeal (MCL 125.223(2)). If the court finds the record before the BZA to be inadequate to make its review, or if there is additional evidence that is material and, for good reason, was not presented to the BZA, it must order further proceedings before the BZA. The BZA may modify its findings and decision as a result of the new proceedings or may affirm its original decision. The supplementary record and decision must be filed with the court (MCL 125.223(2)). The court also has the authority in its review to “affirm, reverse, or modify” the county BZA’s decision (MCL 125.223(4)).

Nonconforming uses. MCL 125.216(1) allows the continuation of a nonconforming use of a building or structure and of land or a premise as existing and lawful at the time of a zoning ordinance’s enactment or amendment even though the use does not conform to the ordinance. The zoning ordinance must “provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms” (MCL 125.215(2)). MCL 125.216(3) authorizes a county to acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses. The county may use the power of eminent domain to do so. The nonconforming use provisions do not provide for a procedure for inventorying and certifying nonconforming uses, so that a property owner could establish the nature and the extent of the use.

Discretionary decisions. According to MCL 125.216d, a zoning ordinance authorizing the consideration and approval of special land uses and planned unit developments, as well as other types of discretionary decisions, must specify the regulations and standards used to make such decisions. In addition, the county may require reasonable conditions to be imposed in connection with such decisions. Such conditions must be recorded in the record of the approval action and must remain unchanged unless the approving body and the owner of the land affected mutually consent to the change.

Special uses. MCL 125.215b authorizes “special land uses,” which are permitted in a zoning district only after review and approval of either the zoning commission, an official charged with administering the ordinance, or the county board of commissioners. The special land use must be found to conform to any specific requirements and standards contained in the zoning ordinance. Here the statute calls for notice to both owners of and occupants of structures on property within 300 feet of the property on which the special land use is sought. In contrast to legislation governing BZA appeals and variance petitions, it also describes minimum requirements for a notice.

Planned unit developments. MCL 125.216c authorizes planned unit development (PUD) regulations, which it describes as “cluster zoning, planned development, community unit plan, and other zoning requirements.” It also describes a special review process based on the application of site planning criteria to achieve integration of a proposed land development project with the characteristics of the project area. The review and approval responsibility is the same as that applied to a special use, as is the standard for notice and public hearings. In a PUD ordinance, a county may provide for a series of final approvals in a multiphase project.

Site plans. MCL 125.216e authorizes a site plan approval process in which a body, board, or official reviews the site plan against the backdrop of ordinance requirements. A site plan is defined as “the documents and drawings specified in the zoning ordinance to insure that a proposed land use activity is in compliance with local ordinances and with state and federal statutes” (MCL 125.216e (1)). A site plan is to be approved if it contains the information required by the zoning ordinance and is in compliance with the zoning ordinance, conditions imposed under the ordinance, other applicable ordinances, and state and federal statutes. One problem with the language concerning state and federal statutes is that it appears to give the local government the authority of the state or federal agencies—the ability to act in their stead. It also suggests that the site plan approval would be the last of a series of approvals, subsequent to state or federal action, but even then, the local government could second-guess the state or federal decision.

Open space preservation. MCL 125.216h requires a county to include in its zoning ordinance a provision that allows, at the option of the owner, residential property to be developed in a manner concentrating the number of dwelling units on not more than 50 percent of the site, with the remainder to remain perpetually in an undeveloped state. The statute identifies a number of devices to do this: a conservation easement, plat dedication, restrictive covenant, or other legal means that run with the land, as prescribed in the zoning ordinance.

The statute does not seem to contain any strong incentive to encourage the concentration of dwelling units on a portion of the site. For example, land that is to be the subject of such a provision must be zoned at a density equivalent to two or fewer dwelling units per acre, or, if the land is served by a public sewer system, three or fewer dwelling units per acre (MCL 125.216h(1)(a)). Thus, this statute does not apply to densities that are higher, nor are density bonuses required or authorized.

Purchase of Development Rights. MCL 125.232 authorizes a county to adopt a purchase of development rights program. Under such a program, the county purchases development rights, but only from a willing landowner. If the county has a zoning ordinance, the purchase must be consistent with the plan on which the zoning ordinance is based.

Enforcement. MCL 125.224 provides that the use of land or building, or a building erected, altered, razed, or converted in violation of a local ordinance is a nuisance per se. The statute authorizes the county to designate an official or officials to enforce the zoning code and either to provide a penalty for a violation or to designate the violation as a "municipal civil infraction," resulting in a civil fine. Beyond this, there is no specific procedure for administratively resolving code violations, such as the use of stop-work orders and administrative hearings.

CITY AND VILLAGE ZONING

In most respects, the City and Village zoning act, MCL 125.581 et seq., is nearly identical to the county zoning act. There are, however, a number of minor differences. For example, under MCL 125.585(4), there are different voting requirements for boards of zoning appeals, and use variances are expressly authorized. In a city or village having a population less than one million, a concurring vote of two-thirds of the membership of the BZA is necessary to grant a variance from uses of land permitted in an ordinance; other decisions not involving use variances only require a majority of BZA members. By contrast, in a city having a population of one million or more, the concurring vote of two-thirds of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to grant a variance.

Another difference for municipalities is a requirement for supermajority voting (viz., approval from two-thirds to three-fourths of the legislative body membership) under certain conditions. MCL 125.584(5) activates supermajority voting requirement for a zoning change when a protest petition satisfying numerical conditions for property owner signatories is submitted to the legislative body.

TOWNSHIP ZONING

Township zoning legislation is also nearly identical to the county and municipal zoning enabling acts. Rather than a township zoning commission, however, the advisory body formulating the zoning regulations and maps and making the zoning recommendations is a four-person township zoning board, although the township board can increase the zoning board's membership to seven (MCL 125.274).

OTHER SIMILARITIES AND DIFFERENCES

MCL 125.273 and MCL 125.203 state that the township and county zoning ordinances "shall be based on a plan" that achieves various stated objectives. In contrast, the city and village zoning act refers to "land development regulations and districts" and provides that they "shall be made in accordance with a plan designed to promote and accomplish"

the act's objectives (MCL 125.581). The exact nature and relationship of the zoning ordinance, however it is named and described, and the "master plan," "basic plan," or "county plan" is not specified. There are no criteria contained in the act that would spell out the test for gauging consistency of zoning text or map amendments with the plan.

The municipal, township, and county zoning acts do not contain express procedures for an individual or entity to apply for or receive development or zoning permits that are ministerial or nondiscretionary in nature, or that implement a discretionary procedure (for example, issuing a zoning permit for a use that also required a variance or special use decision). There are no time limits placed on local governments in considering or issuing such permits, nor is there any kind of requirement for a determination of when an application for a permit is considered to be complete for the purposes of review. There is no procedure for a master or consolidated permit, which would incorporate a variety of separate development permissions. There are no specific procedures dealing with enforcement of permits, including how a citizen may report a violation, how a local government gives notice of a suspected violation through an enforcement order, and whether a local government may stop work so that problems concerning the suspected violation can to be resolved.

MCL 125.581 (cities and villages), MCL 125.271 (townships), and MCP 125.201 (counties) do not state minimum content requirements for zoning ordinances, although, arguably, content requirements are spread through the acts (for example, requirements for a special permit use or discretionary land-use decisions). In addition, MCL 125.600(1)(k) (cities and villages) defines "intensity of development" to include "density," but does not define that term. The township and county zoning definitions (MCL 125.310(1)(k) and MCL 125.240(1)(k)) contain the same omission. Thus, density can be defined as any number of ways, although the standard way of defining density through a zoning ordinance is net density, which is the number of dwelling units per net acre (an acre that excludes publicly dedicated land).

Counties, cities and villages, and townships have different responsibilities with regard to periodic review of zoning ordinances. The county zoning commission is to file a report on the operations of the zoning ordinance, including recommendations for amendments and supplements, at least once a year (MCL 125.213). A city or village does not have a similar requirement. A township zoning board shall "periodically" prepare a report similar to the county requirements (MCL 125.283).

2.3 OFFICIAL MAP, SUBDIVISION REGULATIONS, AND THE LAND DIVISION ACT

OFFICIAL MAP

MCL 125.51 et seq. is an official map act. It allows a city or village (but not a county or a township) to adopt a precise plat showing the exact location of the future outside lines of one or more new, extended, or widened streets, or parks or playgrounds. Through this device, the issuance of permits for construction of buildings that would be wholly or partly within such mapped areas is prohibited. The board of zoning appeals, after holding

a public hearing, can relax this prohibition under certain conditions (MCL 124.54). Still, this provision effectively prevents the building on private land for an uncertain period, and there is no requirement that the city or village must acquire the land that is proposed for public use after a fixed time.

MUNICIPAL ADOPTION OF SUBDIVISION REGULATIONS

Cities and villages must adopt a master plan relating to the major street system within its jurisdiction before exercising subdivision control (MCL 125.43). The municipal planning commission may then adopt subdivision regulations; MCL 125.44 governs the subject matter of such regulations. A planning commission must approve, modify, or disapprove a plat within 60 days after submission; otherwise, the plan shall be deemed to have been approved, and the commission must issue, upon demand, a certificate to that effect (MCL 125.45). Similarly, a township planning commission may recommend regulations governing subdivision of land to the township board, but there is no requirement for a township to adopt a major thoroughfare plan before exercising subdivision control (MCL 125.332). The township board is required to refer plats or other matters relating to land development to the planning commission before final action.¹

LAND DIVISION ACT

MCL 560.101 et seq. is the Land Division Act. It separates the division of land into two categories: (1) land division, which is governed by MCL 560.108 and MCL 560.109; and (2) conventional subdivision, which involves a preliminary and final plat and which is not exempted from platting requirements under those same two sections. Certain types of land divisions are exempt from the act—splits or partitioning of a parcel or tract that result in parcels or tracts of 20 or more acres in size. Such parcels or tracts do not need to have direct access via a driveway or easement to a public road and can therefore be landlocked (MCL 560.109b, MCL 560.102(j)). This provision is questionable, even though the statute puts the property owner on notice that the property is not accessible.

MCL 560.108 contains a complicated formula that limits the number of divisions that can be made from a “parent tract” over a period of 10 years. A township, city, or village must approve or disapprove a proposed division within 45 days after the filing of a complete application that meets the requirements of the statute (MCL 560.109).

The remainder of the act covers conventional land subdivision and it is quite detailed in terms of the format and content of plats. The governing body must tentatively approve a preliminary plat within 90 days from the date of filing, or set forth in writing its reasons for rejection and requirements for tentative approval (MCL 560.112). Under certain circumstances, preliminary plats must be submitted to the state highway department, the

¹ The provisions in the city and village and township planning act relating to subdivision are drawn from the Advisory Committee on Planning and Zoning, U.S. Department of Commerce, *A Standard City Planning Enabling Act* (SCPEA) (Washington, D.C.: U.S.GPO, 1928), Sections 13-15. Section 15 of the SCPEA, however, requires a municipal planning commission to approve or disapprove a plat within 30 days after the plat’s submission, in contrast to the municipal planning act in MCL 125.45, where the requirement is 60 days.

state conservation department, department of environmental quality, the health department with appropriate jurisdiction, and local utilities, among others (MCL 560.113-119). Each of these actions requires a separate submission.

A “final” preliminary plat approval is valid for two years during which the proprietor or applicant prepares a final plat for recordation (MCL 560.131 et seq.). In order for a final plat to be recorded, a number of separate certifications must be submitted by the applicant, including certifications by the county drain commissioner, the county plat board, the state highway commission, the state treasurer, the county treasurer, and the municipal treasurer, as well as the governing body of the municipality, as applicable (MCL 560.142). Requiring that both the municipal treasurer and the governing body approve the plat in certain circumstances seems duplicative.

A one-stop-shopping element, in which the developer makes a single application to the local government, which is then simultaneously sent to various approving authorities, does not appear possible under the act. Further, the subdivision statutes create apparent conflicts; for example, language on the content of subdivision regulations in MCL 125.44 and MCL 560.186 authorizes the regulation of lot width and area, which are actually the subject of regulation in zoning ordinances (although MCL 560.186 allows the waiver of its width and area requirements if connection to a public water and sewer system is accessible to the proposed subdivision and the local government’s zoning and subdivision regulations regulate lot area and width). MCL 560.112, in the Land Division Act, which sets a preliminary plat approval at 90 days, conflicts with MCL 125.45, in the Municipal Planning Act, which requires an approval of a plat within 60 days.²

2.4 INTERPRETATION OF STATUTES; COURT DECISIONS; ATTORNEY GENERAL OPINIONS

Since 1980, there have been no significant decisions by the Michigan Supreme Court interpreting the planning, zoning, and subdivision control statutes, as opposed to those interpreting the state or federal constitution. Nonetheless, here is a sampling of the more interesting rulings by the court concerning statutory interpretation:

SCOPE OF ZONING POWER

Several decisions examined the scope of the powers delegated in the Township Zoning Enabling Act. In *Hess v. West Bloomfield Township*, 439 Mich. 550, 486 N.W.2d 628 (1992), the Michigan Supreme Court found that mooring of boats at a dock adjacent to a lot in subdivision was an exercise of riparian rights subject to regulation under MCL 125.271 et seq.

While a township has the authority under the Zoning Enabling Act to define “family,” that authority is not unfettered. Thus, a zoning ordinance that limited the occupation of single-family residences to an individual or a group of two or more persons related by blood, marriage, or adoption and not more than one other unrelated person violated the state constitution. This was the court’s finding in *Charter Township of Delta v. DiNolfo*,

² As noted above, the 60-day requirement conflicts with the recommendations of the Standard City Planning Enabling Act.

419 Mich. 253, 351 N.W.2d 831 (1984), noting that the ordinance prohibited the defendants from including in their households six unrelated persons.

STATE STATUTORY PREEMPTION

The question of whether state statutes preempt local land-use regulation figured in a number of cases. In *Addison Township v. Gout*, 435 Mich. 809, 460 N.W.2d 215 (1990) the Supreme Court ruled that the exclusive jurisdiction of state supervisor of wells applies only to oil and gas wells and does not extend to all aspects of production process; thus, natural gas processing plant and pipelines were subject to requirements of a township zoning ordinance under MCL 125.271. In *Gackler Land Company v. Yankee Springs Township*, 427 Mich. 562, 398 N.W.2d 393 (1986), the Supreme Court determined that a township zoning ordinance banning mobile or prefabricated homes except in mobile home parks did not run afoul of the Mobile Home Commission Act, MCL 125.1101 et seq.

In *City of Livonia v. Department of Social Services*, 423 Mich. 466, 378 N.W.2d 402 (1986), the court held that adult foster care facilities of six or fewer persons were exempt from local zoning ordinances under MCL 125.583b; it also upheld the constitutionality of the statute. In *Township of Groveland v. Director, Department of Natural Resources*, 419 Mich. 719, 358 N.W.2d 888 (1984), the court determined any hazardous waste treatment, storage, or disposal facility not subject to review by the site review board or which does not require a construction permit under the Hazardous Waste Management Act, MCL 299.501 et seq., is subject to local ordinances governing land use and construction of such facilities, even when an ordinance would preclude construction at a particular site.

LOCAL ZONING CONTROL OVER STATE OR LOCAL PROJECTS

In *Burt Twp. v. Dep't of Natural Resources (DNR)*, 459 Mich. 659, 593 N.W.2d 534 (1999), a lawsuit was filed when the DNR began constructing a boat launch on Burt Lake without the approval of the township zoning board. Finding no legislative intent to exempt the DNR from the township's zoning ordinance, the Michigan Supreme Court ruled that the project was subject to the ordinance.

In *Pittsfield Charter Twp. v. Washtenaw County*, 468 Mich. 702, 664 N.W.2d 193 (2003), the Michigan Supreme Court held that a county shelter for the homeless was exempt from township zoning ordinances. The court interpreted the Township Zoning Enabling Act, MCL 125.271 et seq., and specifically MCL 125.271(1) as well as the County Commissioners Act, MCL 46.1 et seq., specifically MCL 46.11.

REMEDIES FOR REFUSAL TO REZONE

When a city council refused to rezone property as requested, the applicant-owner challenged the refusal as an unconstitutional taking of property in *Paragon Properties v. City of Novi*, 452 Mich. 568, 550 N.W.2d 772 (1996). The Michigan Supreme Court held the refusal to rezone did not inflict actual, concrete injury on the owner and also was not a final decision, as is required for a decision to be ripe for review, because the owner did not request a variance from zoning board of appeals pursuant to MCL 125.585(9). In *Paragon*, the supreme court noted that the enabling statutes gave municipal boards of

zoning appeals the authority to grant “land use variances” and the Novi ordinance authorized them when “it is clearly shown that the land cannot be used for a zoned use...” (550 N.W., at 774, which quotes the Novi zoning ordinance, Section 3104(1)). The court cautioned that “variances should be sparingly granted so that the grant of one variance in an area where many parcels are similarly situated does not result in a material change to the zoning district” and commented that “the effect of a land use variance is similar to rezoning because variances typically run with the land” (550 N.W., at 774). This is probably the most important case of the past two decades, and it raises the question of whether the use variance, as granted by a board of zoning appeals, is the appropriate mechanism to provide a remedy prior to a claim of an unconstitutional taking.³

BILLBOARDS

In *Adams Outdoor Advertising v. City of Holland*, 463 Mich. 675, 625 N.W.2d 377 (2001), a billboard company brought suit challenging prohibitions contained in the City of Holland’s zoning ordinance, which provided that billboards and advertising signs were not permitted, and that existing nonconforming billboards and signs could be maintained but could not be expanded, enlarged, or extended. The Michigan Supreme Court held that although ordinance sections limited the number of billboards within city, they were not an impermissible total prohibition of billboards under the city and village zoning enabling act, MCL 125.592. In *Adams Outdoor Advertising v. City of East Lansing*, 439 Mich. 209, 483 N.W.2d 38 (1992), the Michigan Supreme Court upheld the efforts of a municipality under its home rule statutory authority, but not its zoning authority, to enact police power ordinances to forcibly eliminate nonconforming billboards and signs over reasonable period of time (interpreting MCL 117.4i(5)).⁴

SUBDIVISION AND OFF-SITE IMPROVEMENTS

Altman v. Meridian Township, 440 Mich. 1204, 487 N.W.2d 155 (1992), involved a lawsuit by a developer to set aside the refusal of a township board to approve a proposed 25-lot subdivision in connection with concerns about its design. The state supreme court

³ Michigan attorney Clan Crawford, Jr., has written that the *Paragon* ruling “appears to greatly widen the scope of the variance power and make it a sometimes useful tool for resolve disputes on land use without resort to the courts” (Crawford 2003, Section 6.03, 31). Unfortunately, the problem with use variances is that a board of appeals acquires considerable discretion to act in a manner very similar to the legislative act of rezoning but without a city or village council’s political accountability. Consequently, most professional planners oppose the application of the variance power to uses, or at least uses authorized by an administrative body without legislatively determined criteria. See generally, Carlson (2000), Hyman (1998), and Friedlaender (1998). In a letter to the Michigan Land Use Leadership Council, Attorney Norman Hyman observed that *Paragon* “results in a pure waste of time and resources. Once a property owner’s request for a rezoning of her property is denied by the city’s legislative body, the likelihood of obtaining relief from the city’s zoning board of appeals (whose members owe their appointments to the legislative body) is slim to none.” Hyman points out that under MCL 125.585, the legislative body may itself act as the zoning board of appeals. He recommends that the zoning acts should be amended to expressly state that a challenge to the validity of a zoning ordinance, whether facial or applied, may be brought directly to a court, and that application for a use variance is not necessary as a precondition for such a challenge (Hyman 2003).

⁴ See Michael A. Lawrence, “A Proposal to Amend the Michigan Zoning Enabling Act to Allow Amortization of Nonconforming Uses,” *Detroit College of Law at Michigan State University Law Review* 653 (1998).

held that the board could require the developer of a proposed residential subdivision to construct a direct access route to a county road across the developer's own land, to comply with minimum sight distance requirements for county road intersections and the Subdivision Control Act requirements for suitable access to subdivision. The board could do so because the developer was not required to improve public land or land outside property which the developer had slated for eventual development and the required access route would primarily benefit developer's own property under MCL 560.182(4)(a). When a county road commission conditioned approval of the plat upon the developer's agreement to pay for off-site county road improvements, the court held that the commission exceeded its powers under the Subdivision Control Act, MCL 560.101 et seq., in *Arrowhead Development Company v. Livingston County Road Commission*, 413 Mich. 505, 322 N.W.2d 702 (1982).

ATTORNEY GENERAL OPINIONS

There are a number of recent Michigan Attorney General opinions that have interpreted the scope of the state's planning and zoning enabling acts. While many are highly technical, several have broader application. In Opinion No. 6982 (1998), the attorney general stated that a county building authority incorporated under the building authority act is subject to local zoning ordinances enacted under the city and village zoning act. In a 1996 opinion (No. 6892) concerning the authority of the Natural Resources and Environmental Protection Act, the attorney general concluded that local units of government may not regulate land adjoining a wetland by imposing a buffer or setback on that land to protect the wetland under the authority of the Natural Resources and Environmental Protection Act (MCL 324.101 et seq; MSA 13A.101 et seq.), and that act preempts any zoning authority to impose buffer or setback zones for the specific purpose of protecting the wetland. Local units of government, however, are empowered under their zoning authority to regulate wetland buffer or setback areas for other purposes using the same criteria they might generally use for setback or buffer zones in their zoning ordinance. Consequently, the attorney general concluded, a local unit of government may not require the owner of land containing a wetland less than two acres in size, when filing an application for a wetland use permit, to prove that the wetland is not essential to the preservation of the natural resources of the local unit of government.

While a township may enact reasonable zoning regulations not inconsistent with state statutes or regulations governing agricultural labor camps, the attorney general determined in Opinion No. 6609 (1990) that a township may not use its zoning power to effectively prohibit such camps in agricultural areas.

A home rule city may not designate the zoning board of appeals as the body to review and approve initial applications for planned unit developments under 1921 PA 207, s 4b(2) (Opinion No. 6219, 1984). When a township adopts an entirely new zoning ordinance, it is not required to follow the procedures of 1943 PA 184, s 14 with respect to notification of property owners within 300 feet of any proposed changes (Opinion 6014, 1981). A rezoning protest petition filed under the City and Village Zoning Act must be signed by the owners of at least 20 percent of the privately owned lands located within 100 feet of the boundaries of the parcel proposed to be rezoned. The 100-foot

measurement from the boundary of the parcel proposed to be rezoned does not change simply because publicly owned lands lie within 100 feet of that parcel (Opinion No. 7006, 1999).



Chapter 3: Small Group Interviews and Other Input

APA and MSP conducted six group interviews in April and May 2003 (see Appendix B for a list of participants). Participants included elected township supervisors, farmers, environmentalists, a representative of a transit advocacy group, planners, homebuilders and developers, and land-use attorneys. The groups were convened by their affiliation. The purpose of the focus groups was to determine the strengths, weaknesses, and overall effectiveness of the existing state statutes and to gather recommendations for potential revisions to the statutes. Prior to the meetings, APA and MSP distributed an outline of questions keyed to the statutes and practices so that participants could come prepared to the meetings (see Appendix A). For the in-person meetings, the detailed outline was condensed into the following seven topics:

- Strengths and weaknesses of existing statutes
- Major land-use and development issues facing Michigan
- Potential fixes to existing planning legislation
- The merits of combining or keeping separate the statutes governing township, municipal, and county planning
- The merits developing statewide goals for land use and planning and suggestions for such goals
- Planning and zoning for affordable housing
- The effects of other Michigan laws (aside from the planning statutes) on land use

In addition to the interviews, several professional planners submitted detailed memoranda with written comments on the existing legislation and recommendations for statutory changes. Those comments have been interspersed with the comments of the interviewees below. Citations to the memoranda are included in the bibliography to this report.

The written and verbal comments from the participants provided here are organized along the lines of the categories listed above. As can be expected in these types of meetings, the discussions were not linear; namely, the discussions moved back and forth from the strengths to the weaknesses, to major land-use and development issues, to the difficulties of intergovernmental cooperation, to potential fixes to the planning legislation to address current conditions.

As a point of clarification to readers: this section of report employs extensive paraphrasing of comments (written in the first-person narrative style) from written notes of the actual comments made by participants. It also uses a third-person narrative summary of the general consensus of the focus groups on the topics.

3.1 STRENGTHS OF EXISTING PLANNING AND ZONING STATUTES

The prevailing sentiment of participants in each of the six focus groups regarding the biggest strength of the existing Michigan planning statutes is that they do not place a lot of constraints on what property owners can do with their land.

Yet other oft-mentioned strengths are the open hearings provisions, which allow citizens input on land-use decisions, as well as the requirement for public representation on local

planning commissions. In the view of some, the existing statutes allow for decent comprehensive planning.

From the planners' and municipal attorneys' points of view, the provisions for planned unit developments and special use permits are also strengths of the legislation.

3.2 WEAKNESSES OF THE EXISTING STATE LAWS

Participants in each of the focus groups mentioned that the call for public representation on local planning commissions is a weakness as well as a strength. Many rural townships struggle to find people to serve, and the people that do often lack needed expertise. Generally there aren't enough qualified candidates. The level of expertise of lay planning commissioners is highest in urban areas and lowest in rural areas.

The Michigan planning statutes are too complex, repetitive, and wordy. As a result, the county commissioners and laypersons who sit on township boards have difficulty understanding the laws or knowing how to apply them.

There is too much discretionary decision making by planning commissioners despite the fact they have very little discretion under current statutes. But if that discretion is removed all communities will start to look the same.

From the farmers' standpoint, the discretion given to landowners is a double-edged sword because it encourages growth and development of farmland. Property values are based on knowing land can be easily rezoned when a farmer wants to convert it to another use.

An elected body responsible to the voters should vet land-use decisions. Elected officials are the ones who will face the consequences of these decisions ultimately, anyway. In larger communities, however, the legislative body does not have enough time to make decisions, meaning they are delegated to commissions.

Townships are required to submit the zoning ordinance to the county planning commission (if one exists) or in the absence of such, to a planning committee. The statutes are silent on whether the comments or recommendations of the county on the ordinance are binding or even have to be considered or acknowledged by the township.

Membership of the county zoning board appears specifically limits the number of county board members who can serve and requires some members to be township residents. In contrast, the language in the County Planning Act creating a County Planning Commission is not so specific. The concern is that a county planning commission responsible for zoning could conceivably have no representatives living in the areas subject to its zoning authority. Furthermore, participants suggested that the number of county board members on the zoning board should be limited to one; the current limit of three can make zoning political.

Other statutory weaknesses mentioned in the interviews:

- The Land Division Act is a “mess.” A recent attempt was made in the legislature to do away with the Land Division Act, but the result was a messy revision of the current law.
- Townships vary widely in population but the planning statutes are applied uniformly regardless of size.
- Counties are required to send their zoning ordinance to the Michigan Department of Commerce, but the position at the state has been vacant for years. Furthermore, it is not clear whether the state can exert any authority over the county’s ordinance.
- Under the current system, county drain commissioners and road commissioners have the most say about where growth is going to go. Hence there is no connection between the plan and the provision of public facilities.
- There is no relationship or cross-checking between already-zoned industrial land and an application for a rezoning from agricultural to industrial land.
- The language regarding interim ordinances is somewhat vague, especially making amendments to, referendum of, etc.
- Soil quality and productivity are not considered in the planning process—plenty of other land in a county that is not prime farmland goes undeveloped.

3.3 MAJOR ISSUES FACING COMMUNITIES

SPRAWL AND DEVELOPMENT PATTERNS

Conventional sprawling development is the path of least resistance for developers and thus the predominant development pattern in Michigan. It is a matter of taking the least risky route to avoid additional costs. As a result, communities that push the use of planned unit developments or use other regulatory tools intended to encourage innovation run the risk of driving developers away due to fears about additional costs.

A build-out analysis of Michigan townships and cities would show that all communities are over zoned. Many comprehensive plans do not make the connection between what development density and intensity are permitted and possible under current zoning and the costs of providing infrastructure if the community were to be fully built out.

PLANNING CAPACITY

The capacity to do substantive planning depends on the population of a jurisdiction, regardless of whether it is a township, city, or county. The only truly effective citizen-based planning commissions in Michigan are in the more populous townships, counties, and cities supported by professional planning staff. Too much emphasis in citizen participation is placed at the implementation level, which is where self-serving goals come into play. As a result, good planning gets undercut—even with extensive visioning.

For example, existing homeowners may demand excessive buffering between new and existing developments. Such buffers do not foster a sense of community.

LACK OF COORDINATION

There is a disconnection between decisions made by the Michigan Department of Transportation, county road commissions, and township officials. Currently, townships are continually at odds with the other two agencies. Road commissioners are political appointees who often have no stake in the community. Consequently, townships currently have no voice in some transportation decisions, including road widening, speed control, and parking, all of which have a direct impact on quality of life for township residents.

On another topic, state and county assessors play a big role in farmland assessments, which is a key determinant of which parcels are rezoned from agricultural to commercial or residential.

Among townships, it is very difficult to do any sort of coordinated, regional planning. One exception mentioned was that Brighton and Alderville Townships, Oakland County, and the city of LaPierre have begun to coordinate planning efforts. Using that as an example, one could conclude that four to five townships seems to be a comfortable size for people to work together.

There is no coordinated planning between school districts and local governments. The decisions by school districts to expand or add facilities are made with no regard for local plans.

Local planning effectiveness is also curtailed by state laws and agency rules regarding the Drain Code, tree removal, and annexation.

Existing annexation laws prohibit cities and villages from expanding their boundaries by annexing land from charter townships. This hastens urban disinvestment because it removes opportunities for fully built-out jurisdictions to expand the tax base.

LAND DIVISION ACT

Land division is exempt from subdivision review, and thus developers are using it as an end run around planning commission approval and as a means to avoid planned unit development requirements, resource protection overlays, and other requirements under the subdivision act. Smaller developers find the subdivision act so cumbersome that they use the Land Division Act or the Site Condominium Act. They do this because the formal plat process under the subdivision act can take from six to twelve months. The Michigan Land Division Act allows road easements, but responsibility for plowing and maintaining such roads falls to the townships. The act does not take into consideration what happens when landowners need services. Homebuyers in such areas are not aware that, technically, municipal services are not available to them. Some townships have taken the step to prohibit road easements to avoid this problem.

URBAN REDEVELOPMENT

None of the discussions on planning statute reform in Michigan have focused on the need to reclaim and redevelop urban areas. Rather, the focus seems to be entirely on stopping sprawl in rural and suburban areas. Certainly some of the growth could be redirected to urban areas if proper incentives were in place. A key program to accomplish this has failed. The proceeds of a 2000 bond issue intended for brownfields redevelopment have instead been used to develop recreational properties. It has been 35 years since the Detroit riots, and many parcels remain vacant and tax delinquent. It is currently very difficult to develop on vacant land in cities because of restrictions on combining and condemning parcels and issues with clouded titles. Ultimately, the solution to this particular problem might be more political than statutory.

The Southeast Michigan Council of Governments (SEMCOG) in the Detroit area is one of 14 regional planning agencies in the state. They do growth projections and maintain a "best practices" information distribution center. But SEMCOG has no real planning powers delegated to it, and the executive committee of SEMCOG has weighted voting that serves as a disadvantage to Detroit.

FISCAL IMPACTS OF DEVELOPMENT

Tax revenues generated by a residential subdivision do not support its impacts whereas tax revenues from farmland do, it was argued by some. This is despite the perception that development of land is inherently fiscally beneficial. The true, full costs of residential greenfield development are not borne by the developers who build such homes or the households that purchase them. Currently, the costs of providing roads to new, sprawling developments are not proportionate to tax benefits gained by such developments. If developers thought it would be more difficult to get greenfields rezoned, they might consider infill in urbanized areas. Furthermore, if the development standards for projects in townships were raised, it would, at a minimum, level the playing field with infill development.

FARMING AND FARMLAND PROTECTION

The loss of farmland to new development is, in part, a symptom of both failing cities and weaknesses in the farming industry. The barriers to the redevelopment of vacant land in cities coupled with economic restructuring of the farming industry as a whole are driving new growth and development into farmland and preventing growth in cities.

From the perspective of Michigan farmers, agricultural land is a disrespected resource. It is viewed as a holding, even if it is in active farming. For example, the subdivision statutes refer to division of large parcels. The only large parcels of land in the state are in agricultural use; thus, the subdivision act essentially encourages the development of farmland.

There are economic forces at work both nationally and globally that are affecting farming in Michigan. For example, there are no longer meat processing plants in Michigan, and most of the milk is processed in just four plants. This raises costs and is a hindrance to

farm profitability when, for example, milk must be shipped long distances within the state for processing and livestock must be shipped out of state entirely for processing. Another factor is that Michigan isn't a "through" state, like Indiana, that sees a huge volume of interstate traffic and commerce. This puts farmers at an automatic disadvantage as far as easy access to markets and processing facilities.

Industrial farming has created circumstances in which farmers need more land than in the past to make the same amount of money. Dairy farms have grown in size to the point where some are 3,500 acres or more. This creates serious problems in terms of water quality and manure management. In Michigan, as in other states, the most concentrated agriculture and best soils have been near urban areas. As a result, urban sprawl and expansion puts the best farmland permanently out of use. The farming areas around Detroit have seen a third ring of suburbs emerge. The isolated farms that remain must now compete with urban dwellers' attitudes toward farms.

The forestry industry in the Upper Peninsula faces similar problems in that it depends on large parcels of forestland of at least 240 acres to remain viable. The industry still provides the highest-paying jobs in the region. The current trend of subdividing forested lots into 20-acre parcels removes the potential to harvest those portions of the forest and leads to fragmentation of remaining forested acres.

CHANGES IN HOME-BUYING PREFERENCES

For some people, the motivation to move out into a township was to escape government. But the double-edged sword is that township boards are wholly unprepared to handle new growth and the impacts of urbanization.

It is commonplace to see 3,000- to 5,000-square-foot homes on 10-acre lots in rural and exurban Michigan. Homebuyers are looking for all the modern home amenities out in the country. Township zoning is in part to blame because it contains minimum house-size standards, but no maximum limit on house size. Farmers wonder what will happen when those homebuyers can no longer afford their mortgages or upkeep on the oversized homes.

People who are buying the oversized homes placed in the middle of a large lot may regard it as a good investment, but such development patterns do not help create a sense of community. Neighbors in these areas have no means or reason to associate with each other.

STREAMLINING DEVELOPMENT APPROVALS

There is generally a lack of accountability in the public sector. Developers have gone in for permits with plans that meet codes, it was asserted, but the plans are not approved because of politics. One participant in the builders' group shared an experience where he needed a change of use for a commercial project. The approval seemed to hinge upon the attitude of the planner, who he felt, intentionally left information out to slow things down. Another builder told a story of a planning commission that held up a project until

the developer provided a specifically requested item, which was a special flowering tree favored by a planning commissioner.

With maximum time limits on permit approvals, planners would still take all the time available, and still not get it done sooner. In Birmingham, it takes six to eight weeks to get approval for a single-family house. The holdup is often on the engineering side, and is done intentionally, it was asserted, to slow things down.

3.4 WHAT TO FIX

Many of the people interviewed said townships are too small in area, population, and local expertise to effectively plan for growth and development. A chief symptom of the capacity problem is that few of the township board members who sign off on plats understand the platting process. With respect to the geographic area of townships, the impacts of most developments are felt beyond township boundaries. This points to a need to give counties more authority to do substantive planning because many land-use decisions would be made more effectively at that level or at a larger regional level.

Several participants in the farmers' group indicated a desire for new rules that would direct where development can and cannot occur. One participant suggested the formation of "rural resource areas." This would help developers and communities get past the idea that agricultural land is nothing more than a holding area for future development.

There was general agreement among township supervisors that the comprehensive plan should have binding authority. Currently judges are making zoning decisions; and the plan has no credence in the courts, they contended. This has led township supervisors to wonder why plans are required if the courts are going to continue to ignore them. The long and expensive process to include public views should give the plan a presumption of validity. Township boards find it very difficult to maintain a residential community when developers are able and willing to sue to get land rezoned and they know the courts will generally rule in their favor.

In terms of statutory fixes, township supervisors are interested in any changes to the statutes that will enhance their community's ability to carry out its vision. Examples included:

- Townships need to have more input as to whether they accept or deny applications for mobile home parks.
- Townships should also be enabled to use transferable development rights, with sending and receiving zones that cross jurisdictional lines where appropriate.
- Townships would like to link parks and trails to residential areas; they lack the ability, however, to enforce such a link through state requirements.
- Townships need authority to levy impact fees, particularly for schools and other facilities.

- It needs to be made clear in the statutes whether townships have the authority to grant use variances
- The law needs to be strengthened so that township plans can be enforced. It is currently too easy for developers to challenge the plans with rezoning requests, and townships do not have the resources to defend the plan in court. Perhaps the attorney general should defend the townships.

Other fixes applicable to the other statutes included the following:

- Language in the zoning statute regarding the “overcrowding of population” needs to be removed. There is no compelling health or safety reason in this day and age to discourage urbanization and increased development density.
- The statutes need to contain a standard definition of density. Specifically, it needs to be made clear if the figures being applied refer to gross or net density.
- The statute needs to define “community need” as regards affordable housing. Many communities think they are required only to accommodate the housing needs of *existing* residents in the community proper, which means they are not looking at projected need over time, nor are they addressing needs of the larger region. Part of the solution is to require each community to accommodate a wide range of housing types. For example, some contended that, under the current system, Grosse Pointe thinks its residents need only single-family homes.
- A municipality should not be obligated to provide for every land use within its boundaries. As written, the law regarding exclusionary zoning unfairly burdens newer, growing communities. For example, West Bloomfield is fully developed, with very nice housing. It doesn’t have mobile home parks, or any uses like that, and they are not required to accommodate them. But a newly developing community is required to allow mobile home parks. Other communities were able to exclude this use. Some focus group members maintain growing communities should be able to as well.
- Development proposals that support plan goals should be easier for developers to get approved than proposals that do not support the plan. The statutes need to include better incentives to complete and implement the plan.
- Counties of a certain population should be required to go to a metropolitan form of government, thus enabling them to address issues of urban reinvestment and farmland preservation in one planning framework.
- The statutes should provide a clearer basis for protection from annexation.

- The approval process for subdivisions is far too slow. Developers must get approvals at the local level and the state level. The reviews for septic and well permits are very slow, leading some developers to believe that state agencies use poor soils as an excuse for blocking development. Some people argue that homebuyers are demanding city water systems, but bringing in water creates sprawl, and thus it is a vicious circle.
- The permit process could be expedited if the plans prepared by a licensed architect or engineer can be assumed to be in good order.
- Local governments need explicit authority to prepare and implement access management plans.
- The newly enacted cluster subdivision provision is problematic. It contains a mandated 50 percent set aside of open space, yet developers are not required to use it at all.
- The use of referenda should be eliminated.
- The subdivision process needs serious reform. The Condominium Act (MCL 559.101 et seq.) has a faster approval process; developers are resorting to that law instead of using the Land Division Act.⁵
- Practical difficulties in the variance and appeals processes need to be cleaned up. The *Paragon Properties v. City of Novi* decision (see discussion above) has forced use variances through the court system and judges are getting confused about the whole process. Each circuit now needs a municipal court that can understand zoning. On the reverse side, zoning boards of appeal are also having to function like circuit courts. The statutes should give guidance as to what type of evidence and record is sufficient. There are no lawyers on zoning boards of appeal, but the boards are being required to make evidentiary decisions.
- A separate circuit court to hear land-use cases is needed. There are no current judges on the bench who understand about municipal law or the case law. As a result, the lawsuits drag on for years because judges don't want to deal with them, not knowing municipal law or municipal process. Additional detail in zoning statutes could help judges make better decisions.
- The state needs a state or regional land-use appeals procedure to get to the bottom of local backroom development deals.

⁵ According to the Michigan Society of Planning Officials 1995 report, *Institutional Structures for Land Use Decision Making in Michigan*, "[t]he development community has moved aggressively into site condominium projects because the review and approval time rarely exceeds 90 days due to statutory standards. This is in contrast to the Subdivision Control Act [now the Land Division Act] where a plat typically takes between 12 and 18 months to receive all the necessary approvals" (MSPO 1995, C-5).

- There should be a statewide study and debate regarding whether urban growth boundaries are appropriate for Michigan. (Numerous participants expressed a desire for such; others thought the idea should be studied first.)
- Cities need authority to amortize nonconforming uses. The current rule of what constitutes abandonment for billboards is too tough for cities looking to remove them.
- The Land Division Act needs the following changes:
 - (a) Specify a maximum size lot and then limit the number of splits.
 - (b) Remove language that creates a conflict between private road requirements in the Land Division Act and local zoning.
 - (c) Prohibit the creation of land-locked parcels with no road access.
- Clearing clouded title on potentially developable properties in Detroit and other should be a top priority for the state.
- Michigan needs TDR as well as PDR, and it has to be incentive driven and voluntary. A local TDR program could be dovetailed with ordinances to create “rural resource areas” or agricultural protection zones.
- The PDR program is good in principle, but the total number of farms it has saved is very small and the program is out of money. Prior to passage, the law was weakened to allow counties to insert a provision in the PDR ordinance that could lead to the sale of farmland purchased as part of the program at some point in the future. The Department of Agriculture is responsible for tracking the parcels that have been purchased. To make the program effective, counties should pass local levies to pay for it, or, at a minimum, should stop accepting applications.
- Local governments should be given authority to impose impact fees. (Note: Participants in the builders’ group were solidly opposed to impact fees, citing the fact that the costs are passed on to homebuyers.)
- State facilities and schools should be subject to local review. Currently, schools in Michigan are poorly sited, designed, and planned, with inadequate parking, lack of attention to safety, and no connection to the surrounding communities.
- If the state enables local governments to enact concurrency requirements (adequate public facilities ordinances), the legislation needs to ensure that such requirements do not have the effect of pushing all development to agricultural areas where road capacity is plentiful and private water and sewer are available.
- The legislature needs to make a decision as to when zoning should apply to state land, and if there are exceptions, specifically what they are. There is no justification for schools being exempt from local zoning.

- Development is like water; it takes the path of least resistance. Currently there is resistance to redeveloping urban areas. The statutes should provide incentives for infill development. It is currently more difficult and expensive to develop in urban areas than on greenfields.

3.5 COMBINING STATUTES

Almost all participants in the six groups interviewed agreed that, in their current form, the statutes are repetitive. Many of the provisions could be collapsed into a single statute. Further, the laws have been modified so often that there are too many internal references to other sections, which makes getting a clear interpretation of the law very difficult at times.

Two areas in which the three statutes differ are in the definitions section and in notice requirements. Specifically regarding the definition of what constitutes a plan, the statutes could be made uniform by including the same description of the minimum amount of information that one needs to prepare a plan. The builders and developers, however, warned that making the definitions consistent in every community ordinance might squelch creativity in community character, design, and architecture.

Broadening notice requirements to make the statutes uniform may irk builders and developers, but the process to generate mailing lists has become easier with geographic information systems. More places are requiring notification signs on sites for rezoning. Smaller places do it in newspapers, which is very costly. Placing a notice on the property directing interested people to a web site for additional information would be a low-cost way of providing information.

The wide range in population size in townships has meant the one-size-fits-all law for townships no longer works. There are townships with 1,200 residents and others that exceed 80,000 residents. Clearly, the capacity to plan and to conduct zoning and subdivision reviews is going to vary as well. One possibility would be to use uniform planning requirements and zoning regulations for smaller townships and have different standards for the more populous townships. Further, the laws that apply to cities should be applied to charter townships, which, in many instances, are actually bigger than cities. And finally, townships and counties need to work together in a more coordinated manner.

The township supervisors cautioned that because the various units of government have different authority and requirements for raising taxes, assessing fees, and receiving federal money, any attempt to combine the statutes resulting in increased responsibility for townships must recognize a township may not have the authority to raise money to pay for the new requirements.

3.6 THE DESIRABILITY OF STATE-LEVEL PLANNING GOALS

There was general agreement among the six groups that Michigan needs to have statewide goals for land use and growth. The themes common throughout the interviews were a desire for state-level direction on farmland and open space preservation and barrier removal to encourage urban reinvestment.

There was also consensus that, whatever goals the state devises, they must accommodate flexibility to allow local governments to arrive at their own visions. Members of the attorneys' group expressed concern that the Michigan Municipal League would likely oppose any goals because of home rule turf issues. That said, several participants made it clear that a statewide goal-setting process should be a bold endeavor; the state should not just dabble in it.

In practice, such goals would support the purpose and intent of local ordinances and plans. They would also make the job of citizen planning commissioners at the county and township level a lot easier. But to be effective, numerous participants indicated that state goals would have to have teeth in them. At a minimum, the goals should encourage planning at all government levels that adheres to the state goals. For example, if one of the goals is a desire to reduce land consumption, guidance should be provided as to what the state and municipalities should be doing about it.

Several participants stated that statewide planning goals may sound good in concept, but in practice they would be co-opted by development interests. The absence of adequate representation from planners or agriculture interests on the current Land Use Leadership Council was cited as proof of this problem. Also complicating the issue of establish state goals is the difficulty of reaching consensus statewide on many of these issues given the diversity in the state and the fact that many areas are growing and others are declining.

From the farmers' perspective, state-level planning and goal setting could help answer the question of whether agriculture is going to be a part of Michigan's future or not. Most residents do not regard the state as a food producer, but it has a high degree of agricultural diversity, a fact of which most residents and state officials are unaware. The farmers' focus group said that state goals are also important for agriculture because dairy farms and facilities are going to continue to get bigger, but current regulatory practices at both the state and township level are actively trying to bar such expansions due to environmental problems and complaints from new homebuyers in rural areas. Further, the state already has goals for both the tourism and auto industries, and farming should be no different.

Statewide goals will help eliminate fear of the unknown for farmers. The farmers noted that there are accepted agricultural practices and asked why can't there be accepted practices for housing development?

With regard to the process the state goes through to devise such goals, numerous participants suggested creation of a bipartisan entity with long-term support to establish goals, coordinate agency activities. Goal-setting should start at the local level and then be moved up to state level. The process of devising the goals would help the state evaluate the potential statutory changes.

Communities would implement statewide goals in different ways. Fringe area communities resistant to growth would twist a farmland preservation policy as a means of implementing their own anti-growth legislation, some contended.

Recent statutory amendments for open space development (see above) already express a state goal for open space preservation, as many focus groups participants pointed out.

Examples of statewide goals and objectives suggested by participants included the following:

- Define sprawl and the role of the state in curbing it. High-density development adjacent to an urban area is not sprawl, although it is characterized as such by the public and officials in areas where residents and officials want to slow growth.
- Establish broad policies on how counties and regions within the state want to grow and what constitutes appropriate development patterns for communities of various sizes.
- Direct growth towards existing development and maximize the use of existing infrastructure through infill development.
- Foster communication and coordination between local jurisdictions.
- Preserve open space.
- Direct and encourage local planning entities to create a permanent sense of community.
- Promote brownfields redevelopment to take pressure off farmland.
- Promote interjurisdictional revenue sharing to get away from winners and losers in the race for tax-ratable developments.
- Preserve the natural and cultural heritage of Michigan.
- Use of the Great Lakes should be the overarching issue directing all local plans and zoning to protect lakes. A statewide goal would be to ensure that land-use actions do not adversely affect the Great Lakes in any way shape or form.
- Protect and preserve agricultural land. If the state expresses a goal to protect agriculture, it must express a goal about keeping homes out of such areas.
- Establish an affordable housing goal implemented by a fair-share affordable housing system.
- Require statewide coordination among state agencies.

- Mandate regional planning and regional implementation strategies.

3.7 AFFORDABLE HOUSING

There was general agreement among the groups that there is affordable housing crisis in Michigan. Some participants attribute it to land costs; others blame government regulations. Numerous participants thought that a fair-share concept should be considered, which would avoid the current problem wherein some communities are overburdened with affordable housing and others take no responsibility for providing it whatsoever. Participants in the environmental and transit advocacy group expressed a desire to see state law provide incentives to communities that plan for coordinated transit and housing development. Finally, many participants mentioned the need to educate planning commissioners, elected officials, and the public at large that smaller lots—and smaller homes in some instances—are what are needed.

3.8 REQUIRED TRAINING

There was widespread consensus among the six focus groups that planning and zoning commissioners need more training and expertise than most currently have. There was not agreement on the best means to solve this problem. Members of the builder's focus group were in favor of mandating that planning commissions and zoning boards of appeal contain a certain percent of licensed professionals from architecture, planning, or engineering professions, citing many instances where officials do not even know what the Land Division Act is, nor how density is measured.

Chapter 4: Recommendations of Previous Studies

This section summarizes a number of studies completed since 1992 that deal with land-use issues in Michigan. Some of these are private efforts and some public. The analysis only digests those portions of studies that address specific recommended changes to Michigan planning and land-use statutes.

4.1 AMERICANA FOUNDATION, *MANAGING GROWTH: NEW DIRECTIONS TOWARD INTEGRATED LAND USE PLANNING* (1992)

This study resulted from a special symposium on October 15-18, 1992, under the auspices of the Americana Foundation. It involved 21 participants from both inside and outside Michigan who met with the foundation's trustees. The group's recommendations included the following:

- Create incentives for redevelopment in cities and areas of compact development.
- Require coordinated and integrated land-use planning within and between all levels of government. Implement and fund the state program.
- Amend the Subdivision Control Act (but the report did not say what aspects of the act needed to be amended).

4.2 MICHIGAN RELATIVE RISK ANALYSIS PROJECT FOR THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES, *MICHIGAN'S ENVIRONMENT AND RELATIVE RISK* (1992)

The Relative Risk Analysis project, administered by the Department of Natural Resources with funding from the U.S. Environmental Protection Agency, was an effort to identify and rank the state's most pressing environmental problems. The analysis ranked "the absence of land use planning that considers resources and integrity of ecosystems" as part of a group of issues as posing the highest relative risk for the state. It was described as an issue that involves:

broad changes in the landscape that affect environmental quality. It has many aspects including farmland, Great Lakes and other shorelines, habitat modification, inefficient use of public money, lack of an integrated state land use plan, loss of open space, multiple jurisdictions, soil erosion, timber management, urban sprawl/urban flight, and wetlands. (Rustem 1992, 13)

However, apart from identifying and ranking the issue, the report made no recommendations other than to suggest it should be a high priority for the state to develop a land-use plan "that optimizes wood production, resource extraction, biological diversity, clean water, cultural cohesion, human health, housing, and other societal goals" (p. 22).

4.3 HOUSE REPUBLICAN POLICY COMMITTEE, *TASK FORCE REPORT ON LAND USE* (APRIL 1994).

In 1994, a group of Republicans in the Michigan House of Representatives completed a task force report on land use. Chairing the group was Representative Leon Stille. The task force held public hearings in Cheboygan, Marquette, Grand Haven, Goodrich, Lansing, Niles, Grand Rapids, and Canton. Participants included local officials, residents, business

owners, farmers, and timber industry representatives. The group supported the following changes:

- Unify the planning and zoning enabling acts in a new simplified structure with clear legal authority that recognizes intergovernmental issues.
- Amend the zoning enabling acts to identify potential areas for development in which partial and/or full urban services would be provided.
- Support legislation that creates a regional impact coordination act. Such an act would require municipalities to prepare infrastructure impact assessments for projects over a certain size and send these to municipalities within a certain radius, such as five miles, for a comment period of a reasonable time (60 days). “If the project is approved, but an adjacent community objects based upon the impact to that community, the objecting community could pursue alternative avenues” (House Republican Policy Committee, 4). The report did not say what those avenues might be.
- Empower local units of government to use development agreements, which are negotiated contracts between the government unit and the developer and are binding on both. The agreement guarantees vested rights for a specific time period and may contain negotiated off-site improvements, such as a traffic light, to be paid for by the developer.
- Enable local units of government to adopt “official maps” and transmit these maps to the county as a central depository where interested parties can obtain information on a countywide base. [Note: As described above, Michigan already has an “official map” act, MCL 125.51 to MCL 125.55, although the legislation is not actually titled as such, leading to this understandable confusion. In addition, the existing law does not require recordation of the official map (called “precised plats”) with the county.]
- Require infrastructure and public services to be in place concurrent with development of a specified area. Concurrency, said the report, requires the data necessary to set levels of service for specific facilities. It also necessitates the preparation of capital facilities programs that are not wish lists but are supported by documented funding sources.
- Enable local units of government to require educational guidelines for appointed members of boards and commissions to encourage uniform application and well-informed decision making.
- Enable local units of government to implement a TDR agreement. This technique permits protection of sensitive resources, renewable resource lands, and historic resources or other areas of special community significance by reducing permitted

density on those areas, known as sending zones, and transferring that density, which is severable from the property, to a receiving zone.

- Enable local units of government to implement a PDR agreement. This technique, according to the study, compensates a landowner for value of lost development rights in exchange for maintaining the property at a desired use and density. This legislation was in fact enacted in 1996, as Act 571, and appears in the county, municipal, and township zoning enabling acts.
- Undertake a complete revision of the Subdivision Control Act of 1967. The report identified problems in terms of length of time required for the platting process, the absence of standards for information on preliminary plats, and the lack of regulation on the division of land into parcels exceeding 10 acres or the redivision of parcels every 10 years.

As a consequence of the task force's efforts, a number of bills were introduced in 1995. These included HB 4169 (amending the Subdivision Control Act of 1967); HB 4170 (establishing a "regional impact coordination act"); HB 4171, 4172, and 4176 (amending the county, township, and city and village zoning acts, respectively, to provide for districts based on the availability of services, authorizing the transfer and purchase of development rights, and modernizing the description of a comprehensive plan); HB 4173 (authorizing development agreements); HB 4175 (authorizing official maps). Companion bills for HB 4169 (SB 112) and HB 4170 (SB 113) were introduced in the Senate.

4.4 MICHIGAN FARMLAND AND AGRICULTURE DEVELOPMENT TASK FORCE, *POLICY RECOMMENDATIONS AND OPTIONS FOR THE FUTURE GROWTH OF MICHIGAN AGRICULTURE: A REPORT TO GOVERNOR JOHN ENGLER (DECEMBER 1994)*

This report was a follow-up to the Relative Risk Analysis project. Governor John Engler created the task force to address the impact of current land-use trends on agriculture. It was charged with identifying trends, causes, and consequences of conversion of agricultural land to nonagricultural uses; identifying voluntary methods and incentives for maintaining land for agricultural production; and providing recommendations for enhancing the continued vitality of agricultural activity and protecting private property rights.

Among the changes recommended were:

- Establish a state program to allow communities to create agricultural security areas in which there would be protection from local laws or ordinances that unreasonably restrict farming operations in the area, exempt owners from or substantially reduce property taxes on new family buildings and land improvements, protect against land condemnation and eminent domain actions, and provide landowners with the ability to participate in a TDR program or a state-funded PDR program.

- Enact enabling legislation giving local governments the authority to proceed with PDRs and TDRs.
- Create and fund a state PDR program, implemented at the local level.
- Require agriculture to be addressed in community master plans, county economic development plans, and in all aspects of local planning and zoning, if farmland exists within a community.
- Provide clearer authority to use existing zoning tools, such as cluster housing and open space protection, as an incentive to protect open space (e.g., a density bonus could be granted if houses are clustered).
- Avoid use of ordinances requiring each lot to be a minimum of five or 10 acres (or larger) when land resources important to agriculture and forestry are concerned.
- Amend the Subdivision Control act by:
 - providing a concurrent rather than a sequential review process among state agencies to speed up processing; and
 - changing the act's definition of a subdivision to prevent the creation of lots larger than 10 acres and subsequent subdivision 10 years later.
- Use agricultural impact assessments on state-funded and state-approved projects. An agricultural land review board should be created to review such projects that condemn farmland.

**4.5 MICHIGAN SOCIETY OF PLANNING OFFICIALS (MSPO),
*INSTITUTIONAL STRUCTURE FOR LAND USE DECISION MAKING IN
MICHIGAN: WORKING PAPER (AUGUST 1995).***

This report, prepared with grants from the Charles Stewart Mott Foundation, the Frey Foundation, and the Americana Foundation, analyzed the structure by which planning and land-use decisions in the state are made, including the laws that enable them. The report observed that the current structure works at cross-purposes. For example, home rule and local control emphasize independence rather than interdependence. Local officials, the report asserted, are not rewarded by regional or multijurisdictional constituencies, but only by people within their voting districts, which is “a high disincentive to take actions in support of broader public interests” (MSPO, ii). In most parts of Michigan, a person can move to the county, enjoy a rural lifestyle, and still have ready access to urban services, but not pay the associated costs. The report observed that there is no common structure to existing laws; most of the laws have an “issue focus.” Nonetheless, planning is “clearly institutionalized at every level of government in Michigan” (p. iii).

The report noted that the existing statutory structure of planning, zoning, and environmental laws gave the state a three-pronged role: (1) maintaining old enabling

legislation permitting local governments to plan and zone if they want to; (2) superseding local decision-making authority in a few areas where state interests have been declared, such as solid and hazardous waste and adult foster care; and (3) managing state lands, making modest payments to local governments in lieu of taxes, and offering targeted assistance via special grants and programs.

The report went on to observe that the existing system “cannot work.” Legislation authorizing planning and land-use control contains no “quality control” as to whether required studies, plans, or regulations are of good quality before adoption or implementation. There is no systematic obligation for intergovernmental cooperation (although this recommendation was made before the planning statutes were amended to require planning commissions to notify other local planning commissions and regional planning commissions before plans were adopted). There is no requirement for studies or plans to be kept current and no one to verify and enforce an updating requirement (again, there is now a statute, described above, that local governments revisit plans on a periodic basis). Further, the report said, there is no mandatory training for elected decision makers, for many special commissions or boards, or for planning commissions or zoning administrators.

In terms of gaps and inconsistencies in the planning enabling acts, the study pointed to:

- Voluntary, not mandatory planning.
- Inconsistent requirements for the filing of adopted plans, such as filing them with the county register of deeds for cities and villages, and with the county planning commission for townships. The lack of such a system makes it hard for citizens to find adopted plans for multiple jurisdictions in a central place.
- Strong authority for subdivision control in cities and villages and weaker in townships.

For zoning acts, the report pointed to different rezoning public hearing procedures for townships and cities and villages and lack of clarity on the relationship of zoning to the comprehensive plan (with the exception being the Township Planning Act and the Township Rural Zoning Act). The report pointed out that the municipal official map act, described above, “has not been widely used in cities or villages (and cannot be used in townships or counties), because its legal status is in doubt” (p. 4-21).

For subdivision control, the report noted that there are no links to other infrastructure management acts, including official maps, the Intercounty Highway Act, and local capital improvement programming. While the Municipal and Township Planning Acts do discuss the role of the planning commission in subdivision review (see above), the Subdivision Control Act does not. Moreover, the report said, Section 182 of the Subdivision Control Act (MCL 560.182) is unclear in terms of conformance to a general

plan.⁶ Further, the Subdivision Control Act does not confer authority to require off-site improvements. Finally, the report stated, Section 186(f) of the act is unclear as to whether subdivision and zoning codes can be combined into a unified development code (pp. 4-21 to 4-22).

4.6 INTEGRATED LAND USE TASK FORCE, *TOWARD INTEGRATED LAND USE*, REPORT TO THE MICHIGAN NATURAL RESOURCES COMMISSION (AUGUST 1996).

This report was intended as a follow-up to the *Relative Risk Analysis* study described above. It was prepared by the Michigan Natural Resources Commission to document problems that preclude integrated planning for the state. The task force report recommended the following changes to the planning and zoning laws:

- Require every unit of government in Michigan to have a master plan.
- Consistently define the phrase “master plan” and include a requirement for periodic review and/or updating of the plan by the legislative body.
- Modify the local planning acts to provide consistent authority for all decision-making entities and provide comparable procedures and timetables.
- Amend the zoning acts to provide consistency of board composition, authorities, and procedures of various local units of government. The requirement that local zoning should be consistent with an adopted comprehensive plan should be clearly stated.
- Authorize several new planning tools, including:
 - PDRs and TDRs;
 - urban and general service districts;
 - development agreements;
 - special assessment districts for such purposes as acquire recharge protection and stormwater management;
 - a process for review of developments of regional impact; and
 - impact fees.

4.7 GREAT LAKES COMMISSION, *LINKING BROWNFIELDS REDEVELOPMENT AND GREENFIELDS PROTECTION FOR SUSTAINABLE DEVELOPMENT* (JUNE 2001).

⁶ MCL 560.182(1)(a) allows a local government, as a conditional of approval of a final plat, to require “[c]onformance to the general plan, width and location requirements that it may have adopted and published, and greater width than shown on a county or state plan, but may not require conformance to a municipal plan that conflicts with a general plan adopted by the county or state for the location of certain streets, roads and highways.”

This report, funded by the Charles Stewart Mott Foundation and undertaken by the Great Lakes Commission, a nonpartisan, binational compact agency created by state and federal law, looked at approaches to advance and link brownfields redevelopment and associated greenfields protection in the Great Lakes basin. This study, however, was not about Michigan, but a number of its state-directed recommendations are relevant. These include:

- Enact statewide legislation for TDRs.
- Adopt state planning goals that promote urban revitalization, greenfields protection, transit- and/or pedestrian-oriented development.
- Require coordination among state agencies for state-funded projects that will directly result in changes in land use and establish a process for multiagency review of projects to ensure they support state planning goals.
- Encourage the development of local comprehensive plans and provide funding for their preparation.
- Require that zoning ordinances be consistent with comprehensive plans and require that a condition for state funding for brownfields cleanup and redevelopment be an up-to-date comprehensive plan.
- Establish a comprehensive statewide farmland protection program that includes funding for farmland preservation, tax relief for farmers, disincentives for farmland speculation/conversion, and a public education campaign on the attributes and benefits of farmland.
- Establish a policy of farmlands/greenfields mitigation that requires the state to purchase development rights on other farmland/greenfields to mitigate loss when state-funded projects will directly result in farmland or greenfields conversion.

It should be noted that this report cited numerous examples of planning and land-use control practices from other states but did not evaluate their actual effectiveness, impact, or transferability to the Great Lakes states.

4.8 COORDINATED PLANNING ACT (2000-2001) (HB 6124 AND HB 4571, RESPECTIVELY)

In 2000 and 2001, a “Coordinated Planning Act,” drafted by the Michigan Society of Planning was introduced into the Michigan House of Representatives under the numbers HB 6124 and HB 4571. In its most recent version, HB 4571 contained six chapters devoted to the following topics:

- Chapter 1- Definitions;
- Chapter 2 - Planning Commissions;
- Chapter 3 - Local Unit and Regional Plans;

Chapter 4 - Capital Improvement Programs;
Chapter 5 - Planning Commission Powers Related to Zoning,
Condominium, and Subdivision Review; and,
Chapter 6 - State Agency Plans and State Planning Assistance.

Generally, the bill provided for coordinated land-use and capital facility planning among cities, villages, townships, counties, regions, and state and federal agencies. To accomplish those ends, the bill would provide for: the creation, organization, powers, and duties of planning commissions; the preparation of capital improvement programs; conditions for funding or construction of capital improvements; the review of land divisions, plats, and condominium projects; a grant program to assist with the financing of plans; and the powers and duties of certain governmental officials.

This bill was lengthy. Among its notable features were the following provisions:

- *Consolidation of regional planning activities.* A regional planning commission already created under law, a regional council of governments to which programs of regional planning have already been transferred, or a regional economic development commission could exercise the powers provided for a regional planning commission, but only if the body was in existence on the effective date of HB 4571], had boundaries as defined in Executive Directive 1992-2, and complied with the requirements of the bill.
- *Subdivision.* The bill changed the procedures for subdivision of land, clearly relating them to an adopted plan and requiring that both the local planning commission and the governing body approve subdivisions. The planning commission was also given the authority to review condominium projects. It allowed the consolidation of subdivision regulations and a zoning code as a unified development code.
- *Local and regional plans.* The bill required that a planning commission prepare a development plan. The purpose of the plan would be to promote public health, safety, and the general welfare through the creation of economically and environmentally sustainable communities whose plans were compatible and consistent with other plans of local units and state agencies. The purposes of the plan, among other things also included:
 - (a) the embodiment of a common future vision of new development and redevelopment for at least the next 20 years;
 - (b) the identification of feasible steps to achieve that vision;
 - (c) promoting land-use patterns that prevent unreasonable inequities between communities, races, income groups, or generations; and
 - (d) the establishment of a rational legal basis for zoning, subdivision, condominium, and related land development regulations.

A regional plan would serve as the principal general policy guide for future land use and capital facilities serving the region. Any program that the regional

planning commission had authority or was required by law to implement would be based on the regional plan.

- *Zoning map and zoning ordinance not a plan.* Local plans would include future land-use maps, but the bill further specifies that a zoning map adopted as part of a zoning ordinance under the county, township, or city and village zoning acts would not be considered a future land-use map, and neither a zoning map nor the text of a zoning ordinance would constitute a plan under the bill. Likewise, the bill specifies that a plan would not be considered a zoning ordinance, and a future land-use map would not be a zoning map under the zoning enabling acts.
- *Capital improvement programs.* Within one year after adoption of a plan (if one is adopted), each governing body (whether individually or jointly) would have to prepare (or have prepared) and adopt a proposed capital improvement program (CIP). The proposed CIP would be based on an annual inventory of existing capital facilities, including their location, size and capacity, and current or proposed level of service. The inventory could be included in the proposed CIP or in a separate document.
- *County capital improvement program.* A county CIP would be required to aggregate the CIPs of municipalities within the county. If the county had adopted a plan, it would be required to include in the county CIP all capital facilities to be acquired, constructed, or improved using funds under the control of the county board of commissioners, county road commission, county drain commissioner, or other special entities created with the county as a partner, as well as proposed capital improvements included in the local CIPs. A county board of commissioners could withhold funds from any county agency that had not submitted its proposed capital facility plan or capital improvement plan to the county board of commissioners.
- *State agency plans and state planning assistance.* The Michigan Department of Management and Budget would be required to initiate, within two months after the effective date of the bill, the following activities, among others, either within the department or by interdepartmental agreement:
 - (a) Inventory existing policies embodied in state legislation and programs of state departments that affect land-use decisions and recommend policy changes where warranted to be consistent with the purposes of the bill;
 - (b) Summarize goals, objectives, and policies of the adopted plans of state departments related to land use, economic development, environmental protection, and the provision of capital facilities, in order to identify geographic areas of the state where goals, objectives, policies, and proposed capital improvements could be or are in conflict; and

- (c) Prepare reports that evaluate and make recommendations regarding state technical assistance provided to local governments by state agencies and data and mapping services available to and desired by local units and regional governmental entities.

Chapter 5: Report Recommendations

The following recommendations build on the review of the planning, zoning, and subdivision statutes, the review of case law and attorney general opinions, interviews, and recommendations of study groups and task forces. The recommendations are conservative in nature; they do not assume that the relation between the state and local governments will change dramatically. They focus on fixing longstanding problems with the statutes, clarifying or expanding local authority, and providing procedural or substantive planning safeguards.

5.1 THE STATE ROLE IN PLANNING

(1) Formulate and adopt a state plan that is a direction-setting document for the state and other government units. Such a plan would provide goals, objectives, and policies for the state and other units of government, if desired, such as regional agencies and local governments. It would be a vehicle to coordinate policy among all levels of government in areas such as economic development, land use, transportation, health, education, public safety, water resources, environmental protection, and intergovernmental relations. The plan can be used to direct state capital budgeting and facility location decisions.⁷ Its purpose would also be to infuse plans of other governmental levels with policies that are consistent with those reflected in the state plan, presumably to be reflected in their implementation.

Apart from a review requirement of county zoning ordinances by the Michigan Department of Commerce under MCL 125.211, the state has no direct role in planning and growth management. Nor does the state have any express adopted state planning goals, although a number of states have adopted such goals, either through legislation (included as purpose sections in statutes) or through actions of an administrative agency, such as a state planning commission or similar body. Such states include Connecticut, Florida, Hawaii, New Jersey, Rhode Island, Oregon, and Washington.

The Michigan Land Use Leadership Council has made a nearly identical recommendation in its August 2003 final report to the Governor and Legislature. It proposes that the state “should establish broad-based, visionary land use goals for Michigan that incorporate the vision and goals” described in Chapter 3 of its report. (Michigan Land Use Leadership Council, 2003b, 61). According to the Council, the land use goals are to address economic prosperity, environmental integrity and stewardship of the state’s natural resources, and social equity. These areas were the most frequently mentioned by

⁷ For example, in an attempt to encourage smart growth planning at the local level, a Maine statute limits state growth-related capital investments to designated growth areas contained in a local government’s comprehensive plan, or to areas served by a public sewer system that can provide service to a new project. It also requires state agencies to give preference to municipalities that have adopted comprehensive plans consistent with state smart growth objectives when awarding grants or financial assistance for capital investments. It requires the Maine Department of Administrative and Financial Services to develop site selection criteria for state office buildings to encourage their location in service center downtowns, service center growth areas and downtowns, and growth areas outside of service center communities. Maine Revised Statutes, Tit. 30-A, § 4349-A (2003).

participants in public hearings held by the Council in 2003. Under the Council's recommendations, the state would periodically revisit and update the land use goals.

For an example of a model statute that would establish a state plan of the type contemplated by the Land Use Leadership Council and this report, see Section 4-203, State Comprehensive Plan, of the APA's *Growing SmartSM Legislative Guidebook*, 2002 edition. In Chapter 4, the *Guidebook* also offers different organizational structures to oversee preparation of such a plan and different alternatives for adoption.

5.2 CONSOLIDATION OF LAWS

(2) ***Consolidate the planning and zoning acts.*** At a minimum, the city and village, township, and county planning and zoning laws should be consolidated in two separate statutes to provide a common framework for planning in Michigan. Substantively, there is very little difference among the enabling acts (although professional planners have identified differences in public notice requirements as a problem; these are discussed below). This theme has run through a number of study commission reports and proposed legislative changes, described above.

The merger of the acts will provide the opportunity for the Michigan Legislature to identify and to eliminate discrepancies, even if no other major changes are made. This will allow the lay citizen (and professionals as well) to look at one set of acts and understand the entire structure of planning and land-use control in the state. The merger of the different acts is relatively easy to do; the new laws could begin by defining a "local government" to mean a city, village, township, or county, but including exceptions where the state legislature believes there should be a special provision or procedure that applies to one type or size of governmental unit or size of jurisdiction.

5.3 PLANNING FOR CITIES AND VILLAGES, TOWNSHIPS, COUNTIES, AND REGIONS

(3) ***Broaden the degree of representation on planning commissions and create consistent requirements for commission membership.*** If local planning commissions are to represent a coalition of public interests, they should be representative of the citizens of the local units of government. The municipal planning statute, the township statute, and the county statute have membership guidelines and requirements. MCL 125.33(1) calls for the municipal planning commission's membership to consist of nine members "who shall represent insofar as is possible professions or occupations." MCL 125.324(1) describes the township planning commission of not less than five nor more than nine members, who shall be representative of the major interests as they exist in the township, such as agriculture, recreation, education, public health, commerce, transportation, and industry. All members must be qualified electors *and* property owners in the township. Regarding county planning, MCL 125.102 contains provisions nearly identical to those of the township requirements, with the exception that planning commissioners need not be electors and property owners. In addition, the county commission is charged with establishing "the basis for representative of membership on the commission," as distinguished from the township or municipal statutes, which contain no such similar provision.

While statewide data are not available on the diversity of representation of planning commission membership in terms of desired community interests, these provisions do not adequately ensure that diverse interests are represented on planning commissions. At a minimum, the planning statutes need to provide a mechanism by which the local government advertises for a certain period the availability of positions on the planning commission to solicit applications from the *entire* community, before it selects new commissioners. In addition, the requirement in townships that commissioners be both property owners and electors should be eliminated. This provision prohibits planning commissioners from being renters and business owners who do not own property in the township, but whose interests are nonetheless affected by township decisions. In addition, the criteria for selection should be extended to renters and non-property-owning business people. For an example of language, see APA's *Growing SmartSM Legislative Guidebook*, 2002 edition, Section 7-105.

(4) Provide common and contemporary definitions of a local comprehensive plan and a regional plan. The city and village, township, and county planning statutes contain similar definitions of what is a comprehensive or master plan, but they lack the kind of detail desirable to assist elected and appointed officials in formulating such a plan in the absence of state guidelines or to evaluate the work done by local staff or consultants (i.e., defining what constitutes a “good” plan).

The municipal “master plan” requirement in MCL 126.36 is similar to the provisions for a township or a county, with the exception that the definition includes a zoning plan as a required element. A township’s plan is called a “basic plan” that is to be “a master plan, general plan, guide plan, or the plan...[that is] the basis on which zoning plan is developed” (MCL 125.321(a)). The Township Planning Act, MCL 125.327, describes the contents of the “basic plan.” The County Planning Act, in MCL 125.104 refers to a “county plan” or “plan for the development of the county.” If no zoning ordinance has been adopted for the county, the required county land-use plan and program may be a general plan with generalized future land-use maps (MCL 125.104(2)(a)). This contrasts with the township and municipal planning acts, which are silent on the question of plan maps showing future land use.

The three local planning acts all contain a provision that “[a]t least every 5 years after adoption of the plan, the planning commission shall review the plan and determine whether to commence the procedure to amend the plan or adopt a new plan” (MCL 125.36a(2), MCL 125.329(2), MCL 125.105(7)). The problem with this language is that it does not ensure that, at some point, a plan will actually be updated or that the local government will make the resources available to the planning commission to do so. As mentioned above in the analysis of these provisions, while there is often debate as to whether a plan should be evaluated every five years, depending on the level of development activity, a community should absolutely revise the plan once a decade after new census data becomes available.

A key omission in the statutes is any guidance about housing. Local governments are not required to examine the need for all types of housing, including affordable housing, over

the plan's time horizon; typically, this would be done in a housing element. Moreover, a housing element should look at the need for housing in a *regional* context, taking into consideration the relationship between job growth and housing production to ensure that local governments with major job growth also provide opportunities for housing consistent with that growth.

The Regional Planning Act, MCL 125.11 et seq., contains no definition of a regional plan, although a regional planning commission does have the authority to adopt such a plan "as its official recommendation for the development of the region" (MCL 125.19(1)). The statutes do not specify a public process for adoption of a regional plan that includes public notice and involvement. The act does not state the intended relationship of such a regional plan to the individual local plans within the regional planning commission's jurisdiction. Finally, the act does not provide a process for periodically reviewing and updating plans.

At a minimum, the municipal, township, and county planning acts should use a standard definition for "comprehensive plan" and be consistent in describing its elements and what studies should underpin the plan. In the absence of state guidelines, the definitions should be sufficiently detailed so that a layperson could understand what goes into a comprehensive plan. APA's *Growing SmartSM Legislative Guidebook* contains such language in Chapter 7 (Local Planning), Section 7-201 et seq. A local comprehensive plan consists of an issues and opportunities element (which states the "vision" of the community), a land-use element, a housing element, a transportation element, a community facilities element, and a program of implementation (these elements act to consolidate language that would otherwise be spread out in a statute). The *Guidebook* also identifies conditionally mandatory elements, such as economic development and critical and sensitive areas, or optional elements, such as historic preservation and community design. The *Guidebook* describes the relationship of elements to each other in terms of common studies and definitions, and a requirement for periodic reviews.

The *Guidebook* also defines "regional comprehensive plan," as well as a variety of functional plans dealing with transportation and areawide facilities in Section 6-201 et seq. These definitions could be incorporated into the Regional Planning Act. The *Guidebook* describes the role of the regional plan as a set of common planning assumptions and a framework for local planning; the *Guidebook* offers a variety of mechanism by which this can be accomplished, including the preparation of population and economic projection upon which local planning can be based. At a minimum, the regional planning act should prescribe some kind of relationship between the regional plan and local plans, and provide a mechanism for making the two categories of plans generally congruent.

If it is the state's intention to ensure that regional and local plans address a set of specific state goals, the plan definition should require, as an element, that the local or regional plan contain a statement of state goals and an identification of the specific means by which the plan, and its implementing measures, address state interests. For example, if the state wants to preserve agriculture as an industry, as opposed to just maintaining

“rural character,” local plans would have to state the ways the plan would do that, as applicable.

(5) Incorporate a required agricultural element in the comprehensive plan definition and require such planning for agricultural areas outside of municipalities. Despite concern over retention of agricultural land and potential conflicts with urban uses, the Michigan statutes say nothing about planning for agricultural areas, or the relationship of planning to land-use controls, public investment, and use valuation of agricultural land.

The statutes should incorporate an agricultural planning element that would identify areas to be preserved for agricultural purposes, evaluate and prioritize their importance, identify potential conflicts with urbanized land and with proposed public investment, and propose a program of implement. The *Legislative Guidebook* contains a model for an agricultural and forest preservation element in Section 7-212.

(6) Require local units of government that receive comments on proposed plans from adjoining jurisdictions and the state to incorporate those comments into an appendix to the plan and to respond to them in some manner. Under amendments that became effective in January 2002 (Act 263 of 2001), notified parties (affected planning commissions and public utility and railroad companies) may submit written comments on plans. There is no obligation, however, for the planning commission to respond to the comments, either pro or con, or a requirement that the comments to accompany the plan. Further, there is surprisingly no obligation to notify affected state agencies, whose own plans and public investments may be affected by such plans. This amendment would help to ensure intergovernmental coordination and general good will among local units of government and the state.

(7) Require a process of public notice and involvement in the preparation of regional plans and require such plans to be updated on a regular basis; describe the effect and relationship of regional plans to local comprehensive plans. As noted above, there is no definition of a regional plan. In addition, the Regional Planning Act, MCL 125.11 et seq., is silent on the methods of involving the public, including public notice and workshops. The relationship of regional plans to local plans is unspecified; it is not clear why they are being prepared and what impact they have on local governments or the state government. For examples of language providing for public notice and involvement and specifying the relationship of the regional plan to local plans, plans of special districts, and plans of the state, see the *Legislative Guidebook*, Sections 6-301 to 6-305, and 6-401.

(8) If referenda are to be used at all, replace the provision allowing a zoning text or map change to be put up for referendum with a provision to allow, but not require, an entire comprehensive plan or amendment to be subject to referendum. The collective recommendations provided here assume the comprehensive plan will be the controlling land-use policy guide for a community and the zoning ordinance, subdivision regulations, and capital improvement program will implement them. Therefore it is appropriate that the comprehensive plan be subject to referendum upon receipt of a valid petition, but not amendments to the zoning ordinance or map. This will result in more serious

consideration of proposals contained in comprehensive plans. Alternatively, the legislature may consider doing away with referenda on plans and ordinances entirely, relying instead on an enhanced public participation process to vet public opinion prior to adoption of the comprehensive plan. Still another alternative is to increase substantially the number of signatures required in order to activate a referendum on a zoning ordinance (MCL 125.282 (townships); MCL 125.212 (counties)) from not less than 15 percent of the registered electors residing in the township or county outside the limits of cities and villages who voted in the last regular election for governor, and to require a proportional distribution of signatures among precincts to ensure relative geographic support for consideration of the issue that is subject to referendum

(9) Establish a capital improvement program requirement for municipalities, townships, and counties that is related to the local comprehensive plan. MCL 125.39 requires the municipal planning commission to annually prepare a six-year program of public structures and improvements, which is typically known as a capital improvement program (CIP). While it is desirable that such a program be prepared, it is not clear whether municipal planning commissions are currently doing this because data are not available. Moreover, the program does not seem to be connected to the annual capital budgeting process of the municipality, which is the responsibility of the chief executive (the city manager or mayor) and legislative body. By contrast, there is no similar requirement for township and county planning commissions.

At a minimum, there should be a requirement for a CIP for municipalities, townships, and counties, although flexibility should be provided in who prepares the program, given the capacity of the local government; in any case, it is highly desirable that the planning commission have a review role connected to the program of implementation contained in the local comprehensive plan. The CIP should be expressly integrated with the local government's capital budgeting process, and it should be continuously monitored and updated as the needs and financial capability of a community change. For sample language, see the *Legislative Guidebook*, Section 7-502.

5.4 CITY AND VILLAGE, TOWNSHIP, AND COUNTY ZONING

(10) Provide a set of minimum content requirements and definitions for zoning ordinances to ensure clarity in statewide application and modify purpose language. MCL 125.581 (cities and villages), MCL 125.271 (townships), and MCL 125.201 (counties) do not state minimum content requirements for zoning ordinances, including a full set of common definitions that would apply statewide. In addition, MCL 125.600(1)(k) (cities and villages) defines "intensity of development" to include "density," but does not define that term. The township and county zoning definitions (MCL 125.210(1)(k) and 125.240(1)(k)) also omit the definition. Although definitions of density differ, the standard way to define it in a zoning ordinance is in net terms; that is, density is the number of dwelling units per net acre (exclusive of publicly dedicated land and, in some cases, exclusive of privately owned land that has serious development constraints). If a standardized definition of "density" is created and used by all local governments in plans and development regulations, it would enable comparison among local plans as well as tracking of development trends on a statewide basis.

At a minimum, the statutes should provide a list of the basic contents of a zoning ordinance. The statutes of a number of states provide that as well as a set of common definitions applicable to zoning administration (e.g., Rhode Island, New Jersey). Such lists will assist local governments in organizing a zoning ordinance. For examples, see the *Legislative Guidebook*, Sections 8-101 and 8-201.

The purpose language in the zoning enabling statutes could be reexamined and tightened. For instance, “to limit the inappropriate overcrowding of land” appears, to some degree, to disfavor higher-density compact development. Moreover, while the purpose language speaks to the needs of the state’s residents for “places of residences,” it says nothing about the need for affordable housing on a statewide basis.

(11) Establish a process and a set of criteria for determining consistency between the zoning ordinance and the comprehensive plan. MCL 125.273 and MCL 125.203 state that the township and county “zoning ordinance[s]...shall be based on a plan” to achieve various stated objectives. In contrast, the City and Village Zoning Act refers to “land development regulations and districts” and provides that they “shall be made in accordance with a plan designed to promote and accomplish” the act’s objectives (MCL 125.581); presumably, this is the master plan to which MCL 125.36 refers. Nonetheless, the exact nature and relationship of the zoning ordinance, however described, and the “master plan,” “basic plan,” or “county plan” is not specified. There are no criteria contained in the act that spell out the test for gauging the consistency of the zoning text or map amendments with the plan.

At a minimum, the zoning statutes should provide a process and a set of criteria for determining consistency so that legislative bodies and planning commissions (as well as the public) have guidelines on what kind of relationship the statutes contemplate. For an example, see the *Legislative Guidebook*, Section 8-104.

(12) Standardize public notice and adjoining property owner notice provisions for all land-use decisions and authorize Internet publication of notices. Each of the zoning statutes provides different public notice requirements for what is, essentially, the same type of decision. Discrepancies among notice requirements were a problem identified by the Michigan planners during interviews conducted by MSP and APA in April 2003. For example, for cities and villages, amendment of the zoning map requires “at least 15 days’ notice” (MCL 125.584). A special land-use request requires notice “not less than 5 and not more than 15 days before the application will be considered” (MCL 125.584a). A municipal board of zoning appeals does not apparently have to publish a public notice of a variance application in a newspaper of general circulation and does not have an express statutory minimum time limit for giving notice to property owners within a certain radius of the property (MCL 125.585(6) and (8)). By contrast, for township zoning, the notice requirement for a map change is “not less than 8 days before the hearing” (MCL 125.284). Similar limitations occur in the county zoning statutes. The effect of these omissions is to give differing due process standards throughout Michigan, depending on the preferences of the local government.

At a minimum, there should be a standardized schedule and format for public notices and notices to property owners within a certain radius of the property subject to the land-use action, be it a rezoning, a special use, a variance, or some other type of measure. The Michigan statutes should acknowledge the role that the Internet plays in planning and land development by authorizing or requiring Internet publication of proposed plans and requests for different types of land-use actions, as well as providing for the use of electronic mail. For an example of language dealing with electronic notice for zoning matters, see the *Legislative Guidebook*, Section 8-103.⁸

(13) Establish a unified permit review procedure that applies to all classes of development permits. As mentioned in the analysis above, the three zoning acts need modification that could simplify permit review procedures. For example, the municipal and village, county, and township zoning acts do not contain express procedures for applying for and receiving development or zoning permits that are ministerial or nondiscretionary in nature or that implement a discretionary procedure (for example, issuing a zoning permit for a use that also required a variance or special-use decision). There are no time limits placed on local governments in considering or issuing such permits nor is there any requirement for a determination of when an application for a permit is complete for the purposes of review. There is no procedure for a master or consolidated permit, which would incorporate a variety of separate development permissions.

At a minimum, the statutes should be amended to provide for uniform procedures for applying for and receiving development or zoning permits. For examples, see the *Legislative Guidebook*, Sections 10-201 et seq., Uniform Development Permit Review Process.

(14) Establish a uniform procedure for enforcement of permits and land development regulations. There are no specific procedures dealing with enforcement of permits, including how a citizen may report a violation, how a local government gives notice of a suspected violation through an enforcement order, and whether a local government may stop work in order that the violation be resolved. The statutes uniformly (MCL 125.587 (cities and villages), MCL 125.294 (townships), and MCL 125.224 (counties)) treat violations as nuisances per se.

To this end, the state should consider a specialized enforcement statute. A good example of such a statute is contained in Chapter 11 (Enforcement) of the *Legislative Guidebook*. This model addresses both administrative and criminal enforcement of land development regulations, enforcement orders, and related procedural issues.

(15) Authorize amortization of nonconforming uses in the zoning act and establish a system of inventorying and certifying such uses. The zoning statutes do not provide for

⁸ Ohio is an example of a state that authorizes electronic notice under certain circumstances. Ohio Revised Code, Section 711.10, allows a county or regional planning commission to send electronic notices of consideration of plats to the board of township trustees of the township in which the plat is located.

the amortization or phasing out of nonconforming uses, including signs, over time, although municipal efforts to phase out such uses have been upheld under home rule authority.⁹ This is a particular problem for certain obnoxious uses, such as billboards, adult sex businesses, junkyards, and mineral extraction that can constitute a nuisance. They also do not address the issue of when a nonconforming use is abandoned voluntarily, the question of how to demonstrate “intent to abandon,” and for how long the use must cease in order to constitute abandonment. Nor do they establish a mechanism by which an owner of a nonconforming uses can receive a certificate establishing the nature of the nonconformity to clarify the status of a use. Revision is necessary. For an example of a complete statute governing nonconformities, see the *Legislative Guidebook*, Section 8-502.

(16) Provide authority for incentive zoning and overlay zoning. There is unclear authority for municipalities, townships, and counties to adopt incentive zoning (i.e., zoning ordinance provisions that give density or intensity bonuses or fee waivers for certain types of desired activity, such as dedication of open space, provision of affordable housing, or installation of certain desired public amenities). In addition, there is no specific authorization for environmental or other types of overlay districts. The enactment of such provisions should be considered. For an example, see the *Legislative Guidebook*, Section 9-501.

(17) Provide authority for transfer of development rights. The statutes do not provide express authority for TDRs in connection with preservation of farmland, protection of environmentally sensitive areas, and retention of historic structures. TDR has become a standard tool, for which at least nine states have enabling legislation. The *Legislative Guidebook* provides a model in Section 9-401.

(18) Authorize the creation of the position of hearing examiner to improve the efficiency and impartiality of land-use hearings. The hearing examiner is an appointed official, typically with training in planning and law, who conducts quasi-judicial land-use hearings, and enters written findings based on the record established at the hearing, and either, decides on the application, or a makes a recommendation to a local legislative or administrative body for a decision.

A number of persons interviewed commented on the lack of impartiality and, on occasion, knowledge level of individual board and commission members. They felt hearings were not conducted fairly. A solution is an appointed hearing examiner, who could hear variances and make decisions on special uses and other related site-specific applications. The hearing examiner is often used where there is a heavy caseload or where elected officials felt the BZA needed to be replaced with a single professional decision-maker who is accountable for the final decision (rather than having the decision-making responsibility diffused among a number of lay officials). Since the problem of

⁹The Michigan Supreme Court has, however, upheld the efforts of a municipality under its home rule statutory authority, but not zoning authority, to enact police power ordinances to forcibly eliminate nonconforming billboards and signs over a reasonable period of time (see *Adams Outdoor Advertising v. City of East Lansing*, 439 Mich. 209, 483 N.W.2d 38 (1992), which interprets MCL 117.4i(5)).

obtaining a quorum is eliminated, the hearing examiner thus frees the time of planning commission members and elected officials. The hearing examiner may also be able to hold hearings more frequently than lay boards and commissions and thus can reduce delay for both large and small applicants. For an example of a statute authorizing a hearing examiner, see the *Legislative Guidebook*, Sections 10-301 et seq.

(19) Establish provisions for vested rights. The zoning statutes, in contrast to the Land Division Act, do not deal with the question of vesting. Vesting statutes are laws that create criteria for determining when a landowner has achieved or acquired a right to develop his or her property in a particular manner, which cannot be abolished or restricted by regulatory provisions subsequently enacted. This is called a vested right because it is a right that has become fixed (“vested”) and cannot be eliminated or amended. The Land Division Act authorizes a type of vested right. MCL 560.112 and MCL 560.120 give the applicant for a preliminary plat certain rights (e.g., approval of lot sizes, lot orientation, and street layout) for fixed periods—one year for preliminary approval and two years for final approval.

Vesting is important in connection with zoning because it determines the point at which zoning regulations can be changed during the consideration of a zoning permit or other type of development permit. It is important to have a statute because a statute can clarify vesting rules, eliminating or minimizing the need for litigation. For an example of a model vesting statute, see the *Legislative Guidebook*, Section 8-501.

(20) Define “demonstrated need” in MCL 125.227a (counties), MCL 125.592 (cities and villages), and MCL 125.297a (townships). The language in these sections appears to be aimed at exclusionary zoning ordinances: “A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establish of a land use within a [local government] in the presence of a demonstrated need for that land use within [the local government] and surrounding area within the state, unless a location within the [local government] where the use may be appropriately located, or the use is unlawful.” This language should be amended to list the factors that should be taken into consideration when “demonstrated need” must be shown or when a use “may be appropriately located.”

(21) Establish a process to balance the needs of individual local governments with those of state agencies and other local governments in the review and approval of projects. As both the *Burt Township* (1999) and *Pittsfield Charter Township* (2003) decisions by the Michigan Supreme Court have indicated, projects of state agencies and counties (as well as other local units of government) are exempt from local zoning regulations, even though such projects may have a substantial impact on the local government itself, residents, and private property owners. While this exemption is understandable, there may be a middle ground where the interests of the regulating local government can be balanced with the interests of the governmental unit proposing a project. The *Legislative Guidebook*, in Section 8-106, provides several alternatives worth consideration. One simple alternative when a project of the state or other governmental unit would otherwise be contrary to local zoning regulations is to require a public hearing on the project that is nonbinding and for the purpose of commentary and information

only. The theory behind this approach is to induce the governmental unit proposing the project to change the project to accommodate legitimate local concerns. Another more complex alternative would establish a state system of certification of comprehensive plans. Local governments whose plans have been approved by the state and have been adopted by the legislative body may regulate state facilities, including universities, through their zoning regulations, although a state agency may appeal an adverse local facility decision to a state comprehensive plan appeals board.

5.5 OFFICIAL MAP

(22) *Authorize, by new legislation, adoption of official maps by cities and villages, townships, and counties.* Currently, only cities and villages have this authority. The MSPO report, summarized above, noted that the municipal official map act “has not been widely used in cities or villages (and cannot be used in townships or counties), because its legal status is in doubt” (MSPO, 4-21). An official map is an important planning document allowing the identification and the temporary reservation of public rights-of-way. The *Legislative Guidebook* contains a contemporary version, called a “corridor map” (see Section 7-501) that accounts for recent federal “takings” decisions.

5.6 LAND DIVISION AND SUBDIVISION

(23) *Completely rewrite the Land Division Act and consolidate related provisions from the planning acts.* Without a doubt, provisions for division of land and subdivision in the Michigan statutes are in need of a major rewriting; study after study has asserted this and all of the interviews confirmed it.

The current statutory framework spreads the authority for subdivision review over several code sections. A separate statute deals with land division and subdivision (MCL 560.101 et seq.). Language related to subdivision control, however, appears in both the municipal planning act (MCL 125.43-.45) and the township planning act (MCL 125.332). In addition, cities and villages have the authority to adopt official maps, which control the location of major public improvements on land undergoing subdivision (MCL 125.51 et seq.). A set of complex provisions, enacted in 1997 as a substitute for a clearly written overhaul of the statute, deals with division of land without formal subdivision (MCL 560.108). It appears that, over time, the land division procedure can produce what is in reality a multiple-lot subdivision.

Under certain circumstances, preliminary plats must be submitted to the state transportation department, the state conservation department, the health department with appropriate jurisdiction, and local utilities, among others (MCL 560.113-119). Each of these actions requires a separate submission. Local governments that adopt various types of exactions (such as requirements for park dedication) have no obligation to document the bases for them. In order for a final plat to be recorded, a number of separate certifications must be submitted by the applicant, including certifications by the county drain commissioner, the county plat board, the state treasurer, and the state highway commission, as well as the governing body of the municipality, as applicable (MCL 560.142).

While there are time limits for approvals by government entities, the structure of the land division and subdivision act results in practice in an approval process that can take more than a year. One-stop-shopping, in which the developer makes a single application to the local government, which is then simultaneously sent to various approving authorities, does not appear possible under the act.

At a minimum, the act needs to be completely rewritten, with the various provisions affecting subdivision contained elsewhere in the statutes consolidated. If multiple approvals are to be retained, the act should provide for a single point of entry into the approval process, with a consolidated permit that, in the end, allows the recordation of the final plat without the applicant having to trek to different governmental offices. The planning commission's role also needs to be clarified. The ability to create land divisions with no access should be eliminated because it results in lots that are, as a practical matter, not buildable; it is difficult to understand what public purpose the current provisions serve. Conflicts among time limits need to be resolved, and the review process shortened. The Land Division Act should limit the number of lots created through a minor subdivision process (i.e., one in which no public right-of-way needs to be dedicated) to not more than five. Once five lots have been created from a parent property, any subsequent lots would need to go through a conventional subdivision process.

For an example of a model subdivision statute and uniform provisions for development improvements and exactions, see *the Legislative Guidebook*, Sections 8-301 and 8-601.

5.7 PAYING FOR GROWTH

(24) Authorize development impact fees for off-site improvements but provide for state certification and periodic review of impact fee ordinances and administration.

Michigan does not currently have legislation authorizing impact fees, although many states, including Illinois, Indiana, and Ohio, now authorize them.¹⁰ A development impact fee statute authorizes local governments to assess fees upon new development projects to cover capital expenditures by the governmental unit on the infrastructure required to serve the new development. For example, a transportation impact fee could be used to offset the costs of road widening and signalization as a result of new development; this is the most typical use of impact fees, although they may include other types of development specific infrastructure improvements, such as water, and sanitary and storm sewer.

Consequently, a general statute should be enacted authorizing several types of impact fees, including transportation. Such a statute should have the following characteristics:

¹⁰ 605 Illinois Compiled Statutes, Sections 5/5-901 et seq. (2003) (Road Improvement Impact Fee Law); Indiana Code, Sections 36-7-1300 et seq. In Ohio, municipalities may impose certain types of impact fees by virtue of their home rule powers under the Ohio Constitution (see *Home Builders Assn. of Dayton & the Miami Valley v. Beavercreek*, 729 N.E.2d 349 (Ohio 2000)).

- The impact fee must be based on a local comprehensive plan, from which land-use assumptions (including land-use density and intensity as well as use) may be established.
- There must be a requirement for a CIP, so that the local government can make an assessment of its existing capital facilities, their capacity, planned or projected demand for new development, and planned capital facilities to meet that demand.
- The imposition of a fee must be rationally linked to an impact created by a particular development and the demonstrated need for related capital improvements pursuant to a CIP.
- Some benefit must accrue to the development as a result of the payment of a fee.
- The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary by the development and must not exceed the cost of the improvements.
- A fee cannot be imposed to address existing deficiencies except where they are exacerbated by new development.
- Funds received under such a program must be segregated from the general fund and used solely for the purposes for which the fee is established.
- The fees collected must be encumbered or expended within a reasonable time frame, typically not to exceed five years, to ensure that needed improvements are implemented, and refunds should be authorized if the local government has not expended the funds within that time frame.
- The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources (such as federal and state grants, developer initiated improvements for impacts related to new development, etc.) and local tax payments, which fund capital improvements, for example.
- The impact fee revenues cannot be used to cover normal operation and maintenance or personnel.

Apart from these considerations, there should be state oversight to ensure that the impact fee legislation is administered fairly and that local governments receiving the impact fees account for them, and spend them in a timely manner to benefit the development on which the fees were imposed. Moreover, guidance and training are needed on how to develop the impact fees and to ensure that the fees themselves represent the actual cost of planned improvements. The *Legislative Guidebook*, in Section 8-602, provides a model impact fee statute. This model should be modified for Michigan to provide for the promulgation of a model ordinance by a state agency, and the certification of local ordinances, including the methodology for calculating required fees, as meeting state

requirements before they can become effective. Finally, the state should require a periodic report on the expenditure of impact fees by local governments. If local governments fail to follow proper procedures in calculating fees and spending them for appropriate purposes, the state should be able to intervene as appropriate.

5.8 DISPUTE RESOLUTION, MEDIATION, AND ADMINISTRATIVE AND JUDICIAL REVIEW
(25) Authorize mediated development agreements as a remedy to be sought before challenging denials of zone changes and other land-use decisions. The *Paragon Properties* decision, described above, places the board of zoning appeals in the position of the court of last resort before constitutional challenges to denials of zone changes. As noted earlier, the decision has been widely criticized on a number of grounds. A law journal commentary on the decision summarized one point of criticism:

[S]ome argue that allowing the ZBA to grant a use variance for a taking claim conveys legislative authority to the ZBA, and thus violates the separation of powers doctrine [Footnote omitted]. The theory is that the ZBA is performing a legislative function by deciding if a use variance is applicable when a landowner seeks to rezone property. The ZBA is said to violate the separation of powers doctrine because it is only authorized to provide administrative relief and not “create legislation.” [Footnote omitted] (Carlson 2000, 2028)

While a board of zoning appeals is not free to amend the zoning code, it is, in effect, substituting its judgment for that of the legislative body in granting “relief” to an applicant who has been denied a zoning district change. It would seem more appropriate that if relief is to be granted from a legislative decision, the applicant should approach the legislative body for the remedy rather than the nonelected board of zoning appeals.¹¹

A solution is the mediated development agreement provision contained in the *Legislative Guidebook*, in Section 10-504, and the development agreement provision in Section 8-701. Under these provisions, any landowner who has been denied a development permit, or granted a permit subject to conditions, and who feels that the land development regulations, individually or cumulatively, impose an undue hardship on his or her development and use of the land may request mediation. The local government then has 30 days to decide whether there will be mediation. The goal of the mediation is to enter into a development agreement although other remedies and measures may be considered. The only duty of the landowner and the local government is to participate and negotiate in good faith.

A development agreement, which is not presently authorized by the Michigan land-use statutes, may address any issue that local land development regulations can cover. A development agreement is considered to be, and must be approved as, a land development regulation. The development agreement must therefore be consistent with the local comprehensive plan. Regardless of who negotiates it on

¹¹ Indeed, one planner from Taylor, Michigan, commented that her city did not issue use variances, even though the city and village zoning statutes permit them, because “[w]e believe they usurp City Council’s rezoning authority” (Weinstein 2003).

behalf of the local government, it must receive the approval of the local legislative body to become effective, thus avoiding the problem of policy decisions being made by administrative bodies. And approval of the development agreement must be preceded by public notice and hearings, so that the perception of secrecy and back-room dealing is reduced.

The language in the *Guidebook* for mediated development can be modified to include rezoning as a form of development approval. The importance of this change is assurance that the legislative body itself will oversee any type of agreement with a developer in lieu of a court challenge.

(26) *Reevaluate the process for judicial review of land-use decisions and consider a specialized court or a special judge to handle land-use litigation.* The attorneys interviewed asserted that the amount of land-use litigation in the state necessitates the appointment of a special judge or a creation of a special court to handle such litigation. In addition, some attorneys suggested that there needed to be more detail in the state statutes governing appeals and as-applied and facial challenges to zoning decisions. More and more, the attorneys said, local boards of zoning appeals hearings are becoming like court cases, which was a consequence of the *Paragon Properties* decision.

In any case, the legislature should consider looking at this entire area in more detail. Chapter 10 of the *Legislative Guidebook* contains an integrated system of administrative and judicial review of land-use decisions intended to clarify issues of standing, preparation of a record, and the contents of complaints to the court for relief.¹² In addition, some states, like Massachusetts, Oregon, and Washington, have specialized hearing boards or courts that hear land-use cases.

5.9 TRAINING OF PLANNING OFFICIALS

(27) *Require initial training for planning commission and zoning board of appeals members as a condition of appointment, unless specifically exempted by the local legislative body.* Knowing the procedural and substantive requirements of Michigan's planning laws is now more important than ever. Appointed planning officials who fail to do so can create liability for the communities they serve. A number of the people interviewed contended that many planning officials' knowledge of the state and local laws left a great deal to be desired.

While voluntary training for planning officials has long been available through the Michigan Society of Planning, it is time to consider a mandate in order to sit on local boards and commissions. In response to increasing complexity of local planning and heightened levels of litigation, Kentucky, South Carolina, and Tennessee have recently

¹² For a discussion of the proposals contained in Chapter 10 of the *Legislative Guidebook*, see Daniel R. Mandelker, "Model Legislation for Land Use Decisions," *Urban Lawyer* (forthcoming). Mandelker, Stamper Professor of Law at the Washington University School of Law, was the principal drafter of the model legislation in the *Guidebook*.

required appointed planning officials to undergo regular training on an annual basis.¹³ Local government associations, such as the Kentucky League of Cities, and APA chapters have taken action to provide such training in a low-cost and convenient way, either through short courses or as part of association meetings.

¹³ Kentucky Revised Statutes, Sec.147A.027 covers orientation and continuing education training for planning and zoning; South Carolina Code, Secs. 6-29-1310 et seq. cover educational requirements for local government planning and zoning officials or employees; Tennessee Code Sec. 13-3-201 addresses community planning commissions, planning regions and commissions for unincorporated communities, and training and continuing education. For a discussion of the enactment of the Kentucky law, see Marshall Slagle, "Kentucky Enacts Continuing Education Requirements for Planning Officials: The Inside Story," 53 *Land Use Law & Zoning Digest* No. 9 (September 2001): 11-12.

Appendix A: Small Group Interview Participants

Bibliography

Americana Foundation. 1992. *Managing Growth: New Directions Toward Integrated Land Use Planning*. Novi, Mich.: The Foundation.

Arroyo, Rodney. 2003. Planning Consultant. Memorandum to David Downey. February 11.

Bloom, Clifford H. 1997. "The 'Land Division' Approval vs. 'Use' Approval Issue." *Planning and Zoning News*, July, 6-7.

Bohlen, Sarah, Mary Beth McGuire, and Stuart Meck. 1996. "Getting Started: Initiating the Process of State Planning Law Reform." In *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service Report No. 452/463. Chicago: American Planning Association, March, 171-83.

Carlson, Sandra K. 2000. "Seeking a Variance as a Prerequisite to Challenging a Zoning Ordinance." 45 *Wayne L. Rev.* 2011.

Crawford, Jr., Clan. 1988. *Michigan Planning and Zoning, 3d Edition*. Ann Arbor, Mich.: Institute of Continuing Legal Education, and Cumulative Supplement, January 2003.

Diebel, Alice. 2003. "Planning Under Michigan Planning Enabling Acts: The Wexford County Example." *Planning and Zoning News*, May, 5-10.

Fisher, Mike. 2003. Assistant City Attorney, City of Livonia. Email to David Downey. May 27, 2003.

Friedlaender, Susan K. 1998. "Paragon's Catch 22: Can Seeking and Being Denied a Use Variance From a ZBA Preclude the Litigation of a Subsequently-Filed Taking Claim?" *Michigan Real Property Review* 25: 161.

Gibb, Megan. 2003. Director of Planning and Development, City of Ypsilanti, Michigan. Memorandum to Michigan Society of Planning Advisory Committee. February 7.

Great Lakes Commission. 2001. *Linking Brownfields Redevelopment and Greenfields Protection for Sustainable Development*. Ann Arbor, Mich.: The Commission, June.

House Republican Policy Committee. 1994. *Task Force Report on Land Use*. Lansing, Mich.: The Task Force, April.

Hyman, Norman. 2003. Attorney, Honigman Miller Schwartz and Cohn, LLP, Bingham Farms, Michigan. Letter to Michigan Land Use Leadership Council. May 6.

Hyman, Norman. 1998. "Paragon Properties Co. v. City of Novi Silently Overrules Fifty Years of Zoning Law." *Wayne Law Review* 44: 1253.

Integrated Land Use Task Force. 1996. *Toward Integrated Land Use Planning: Report to the Michigan Natural Resources Commission*. Lansing, Mich.: Environmental Administration Division, Michigan Department of Management and Budget, August.

Meck, Stuart, Gen. Editor, 2002. *Growing SmartSM Legislative Guidebook: Model Statutes for Planning and the Management of Change*. Chicago: American Planning Association, January.

Marquette County, Michigan, Community Information System. "The Coordinated Planning Act Legislative Summary." [Accessed June 20, 2003.] Available at <http://www.mqtinfo.org/planningeduc0155.asp>

Meyerson, Emily. 2003. Memorandum to Stuart Meck. February 10.

Michigan Farmland and Agriculture Development Task Force. 1994. *Policy Recommendations and Options for the Future Growth of Michigan Agriculture: A Report to Governor John Engler*. Lansing, Mich., The Task Force, December.

Michigan Land Use Leadership Council website. 2003a. [Accessed May, June, and August, 2003.] Available at <http://www.michiganlanduse.org>

Michigan Land Use Leadership Council. 2003b. *Michigan's Land, Michigan's Future: Final Report of the Michigan Land Use Leadership Council*, August 15. [Accessed August 29, 2003.] Available at: http://www.michiganlanduse.org/MLULC_FINAL_REPORT_0803.pdf

Michigan Relative Risk Analysis Project White Papers. 1992. Lansing, Mich.: Michigan Department of Natural Resources, July.

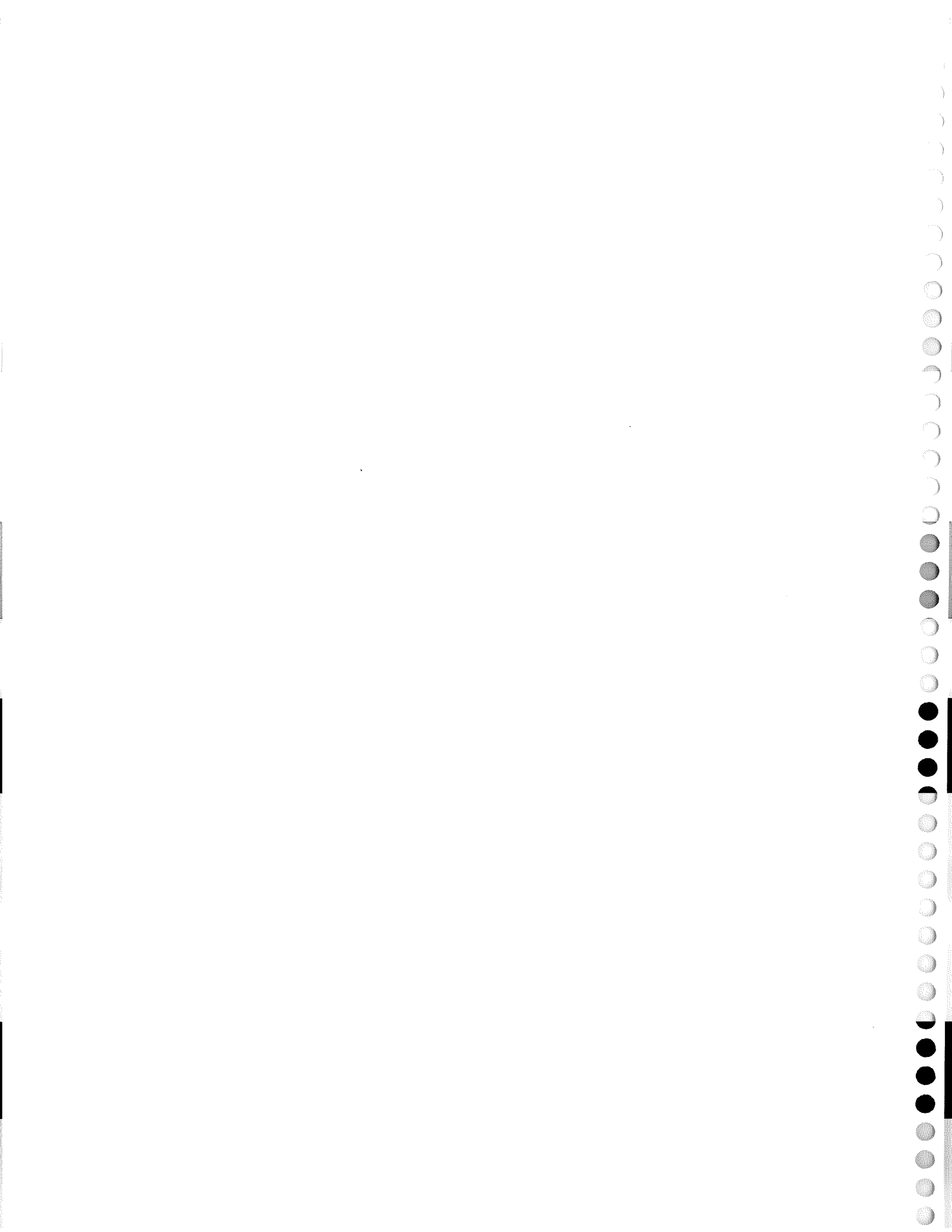
Michigan Society of Planning (MSPO). 1995. *Institutional Structure for Land Use Decision Making in Michigan: Working Paper*. Rochester, Mich.: MSPO.

Michigan Society of Planning Officials (MSPO). 1994. *Agricultural Trends Working Paper*. Lansing, Mich.: MSPO.

Poulson, David. 1997a. "Critics Slam Urban Sprawl Bill." *The Grand Rapids Press*, January 5, 1.

_____. 1997b. "Farmers' Objections Fail to Sway Engler." *The Grand Rapids Press*, January 23, 1.

- Rustem, William R., et al. 1992. *Michigan's Environment and Relative Risk: Michigan Relative Risk Analysis Project*. Lansing, Mich.: Michigan Department of Natural Resources, July.
- Slagle, Marshall. 2001. "Kentucky Enacts Continuing Education Requirements for Planning Officials: The Inside Story," *Land Use Law & Zoning Digest* 54 (September)..
- Weinstein, Marilyn. 2003. Planner, City of Taylor, Michigan. Questionnaire response.
- Weitz, Jerry. 2002. *Growing SmartSM User Manual*. Chicago: American Planning Association.
- Wyckoff, Mark A. 1997. "Land Division Act Amended . . . Again. . . Already: Significant Loss of Local Control and Consumer Protection." *Planning and Zoning News*, July, 5-8.
- Wyckoff, Mark A. 2001a. "Draft Coordinated Planning Act Reintroduced." *Planning and Zoning News*, April, 5-6.
- _____. 2001b. "The Draft Coordinated Planning Act, HB 4571 Is Dead—But Coordinated Planning Lives on as HB 5038 and Companion Bills." *Planning and Zoning News*, October, 5-8.
- _____. 2001c. "How the Coordinated Planning Act Would Improve Community Planning in Michigan." *Planning and Zoning News*, February, 4-12.
- _____. 2002 "Unfinished Business: Needed Land Use Reforms." *Planning and Zoning News*, December, 6-12.
- _____. 2002. "New Zoning & Planning Amendments: Open Space Zoning Mandated & Coordination Requirements Added to Planning Enabling Acts." *Planning and Zoning News*, February, 6-10.



Appendix A: Small Group Interview Participants

Small Group Interview Participants, by Affiliation, and Location, and Date of Meeting

Tuesday, April 15, 2003
East Lansing, Michigan

Farming and Agriculture Group

Kenneth Blaauw	Shelbyville
Rick Lawrence	Hickory
	Corners
Duane Scheuerlein	Freeland
Edward L. Kretchman	Saint Joseph
Dale Robson	Niles
Paul Meredith	Coldwater
William Beethem	Cheboygan
John Jelinek	Davison
Benny Heriou	Bark River
Gary Haynes	Mason
Janet Lyon	Eaton Rapids
Dennis Heffron	Belding
John Stack	Attica
Louis Martus	Brown City
Nancy Mauer	Scottville
Brian Bellville	Prescott
Fred Walcott	Allendale
Dennis Mahoney	Saint Charles
Jane Deuring	Frankenmuth
Doug Fournier	Richmond
Chuck Kwasnik	Avoca
Jennie Breuninger	Dexter

Environment and Transportation Group

Norm Cox	Ann Arbor
Leo Dorr	Lapeer
Dennis Fijalkowski	Bath
Lawrence Hands	Detroit
Phil Wells	Lansing

Wednesday, April 16, 2003
East Lansing, Michigan

Planners

Michael Boettcher	Detroit
Darrel Schmalzel	Walker
Jeff Chamberlain	Kalamazoo
Denise Pike Guzman	Mount Clemens
Philip Hathaway	Owosso
Rodney Arroyo	Southfield
Ralph Nunez	Southfield
Robert Beaugrand	Ypsilanti
Mark Taormina	Livonia
John Jackson	Northville
Jay Kilpatrick	Kentwood
Keith Edwards	Grand Blanc
M. Rory Bolger	Detroit
Mark Miller	Troy

Township Supervisors

Carl Gabrielson	Fenton Charter
Linda Barber	Flint Charter
Neil West	Leroy
Susan McGillicuddy	Meridian Charter
Cindy Heinbeck	Alpine
Tom Duddles	Lake
Robert DePalma	Groveland
Diane Randall	Roscommon
Chester Koop	Rose
Darwin VanderArk	Leighton
Roland Crummel	Laketon
Norm Cox	Ann Arbor

May 22, 2003
Brighton, Michigan

Attorneys

Gerald Fisher	Farmington Hills
Norman Hyman	Detroit
Mike Fisher	Livonia
Carol Rosati	Farmington Hills
John Dolan	Clinton Twp
Clan Crawford	Ann Arbor

Home Builders

Dave Peters	Ann Arbor
Boyd Buchanan	Pinckney
Fred Capaldi	Birmingham

Appendix B: Focus Group Questionnaire

Appendix B: Focus Group Questionnaire



American Planning Association

122 S. Michigan Avenue, Suite 1600
Chicago, IL 60603

TO: Focus group participants, Michigan Planning Statute Reform Initiative Project;
other interested parties

FROM: Dave Downey, Executive Director, Michigan Society of Planning (MSP)

SUBJ: Questions on Adequacy of Planning, Zoning, and Subdivision Statutes,
Michigan Compiled Laws

DATE: March 19, 2003

The Michigan Society of Planning and the American Planning Association Research Department are conducting a study of the Michigan's planning, zoning, and subdivision statutes. Based on a review of the Michigan statutes as well as the recommendations of several study commissions and groups, we have developed a list of specific, but open-ended, questions for discussion by the regional focus groups of which you are a part. The objectives are to determine how the state statutes are affecting actions by local governments, the private sector, and the state, where there are gaps in state law that should be addressed by new statutes, and other areas of potential concern.

We would appreciate your reviewing these questions in advance of the focus group meetings. Also, if you have a copy of the Michigan Compiled Laws (MCL) (or can access them online (<http://michiganlegislature.org/law>)), it would be helpful if you would review the relevant sections of the MCL that are cited in many of the questions below.

Of the questions that follow, our priority is to have you and the other focus group participants answer at least the questions in the "general" category below. We acknowledge that the questions in Sections II through VI of this memo may require more-than-general knowledge of Michigan Compiled Statutes. Please do not feel compelled to answer any questions other than the ones that you feel comfortable in answering.

I. General

(1) What are the three biggest strengths of the Michigan planning, zoning, and subdivision statutes?

(2) What are the three biggest weaknesses of the Michigan planning, zoning, and subdivision statutes?

- (3) What are the major issues with respect to growth and development patterns in your community?
- (4) If you could add to or fix three provisions in any part of the Michigan statutes affecting planning, zoning, and subdivision, what would they be?
- (5) Should the planning and zoning statutes for municipalities, townships, and counties be combined? If yes, what provisions should be uniform for all types of governmental units, and what provisions should be different?
- (6) Michigan currently has no express state-level planning goals. Such goals would influence the preparation and implementation of local plans and development regulations and the location and timing of public investments, both state and local. Should it? If so, (a) what are some examples of what such goals should be; and (b) what should the system by which local plans and land-use decisions incorporate such goals look like?
- (7) Affordable housing is not discussed in either the planning or zoning enabling acts. What are local governments doing to address the creation of opportunities for affordable housing? What *should* they be doing as part of the planning and zoning enabling acts?
- (8) What other state laws, including the Michigan Environmental Quality Act, significantly affect the operation of the planning, zoning, and subdivision statutes? In what ways do they affect them? What changes should be made?
- (9) Should continuing education and training be required for members of planning commissions and boards of zoning appeals, as is the case in Kentucky and Tennessee?
- (10) Are there any court cases that suggest that statutory provisions need to be changed in some way? Please identify those decisions.

II. City and village, township and county planning

- (1) MCL 125.33 calls for the municipal planning commission's membership to consist of nine members who "shall represent insofar as possible different professions or occupations . . ." How has this language worked in practice? Do municipal planning commissions represent diverse professions or occupations and renters as well as homeowners? How can the statute ensure that diverse points of view are represented on the commission? (See similar discussion of township planning commission below).
- (2) MCL 125.36 defines the elements of a master plan. Is the description of these elements appropriate and useful? Should the description be rewritten? What other elements might be included?
- (3) MCL 125.38 (as amended January 2002) describes a process for approval of the municipal plan by the planning commission and by the legislative body. The law provides for the legislative body to essentially waive its right to approve the plan. Where the legislative body opts to approve the plan, if a dispute regarding the plan arises between the planning commission and the legislative body, the planning commission is required to

amend the plan to respond to the objections of the legislative body. Should the legislative body be able to adopt the plan on its own without going through such a bargaining process? What is the benefit of allowing the legislative body to opt out of approving the plan?

(4) MCL 125.39 requires the municipal planning commission to annually prepare a six-year program of public structures and improvements (also known as a capital improvement program). However, this program is not connected by statute to the annual capital budgeting process of the municipality. Should the statute be changed? Are municipal planning commissions in fact preparing such programs? Neither the township nor county planning enabling legislation expressly requires the preparation of such programs on an annual basis. Should they?

(5) A “basic plan” is defined in MCL 125.321 and 125.327 for township planning purposes. Is this definition adequate?

(6) MCL 125.322 defines the purpose of township plans prepared under the statute. Are these purposes of contemporary utility? Should new purposes be added and should existing purposes be modified?

(7) MCL 125.324 describes the township planning commission as consisting of not less than five nor more than nine members, which shall be representative of the major interests as they exist in the township, such as agriculture, recreation, education, public health, commerce, transportation and industry. All members must be qualified electors and property owners in the township. Does this language ensure that a diversity of perspectives may be found on the planning commission? What groups may be left out by this description? What mechanisms could be established to ensure a diverse pool of applicants for planning commission members?

(8) MCL 125.37b, MCL 125.327b, and MCL 125.104c describe a system in which various governmental units submit comments on municipal, county, and township plans. The comments are advisory. Should a local government that is making a plan be obligated to respond to the comments in some way, and should these comments, in a summary form, be part of the plan?

(9) MCL 125.328 authorizes an approval process by the township planning commission and township board that is identical to the municipal planning act. How well do the provisions in this section work in practice?

III. Zoning

(1) MCL 125.581 (cities and village), MCL 125.271 (townships), and MCL 125.201 (counties) do not state minimum requirements for zoning ordinances. In addition, MCL 125.600(1) (k) (cities and villages), defines “intensity of development” as including “density” but does not define “density.” There is a similar omission in the township and county zoning definitions (MCL 125.210(1)(k) and MCL 125.240(1)(k)) . Thus, density

can be defined in any number of ways. Should this, and other definitions be added to ensure uniformity at the statewide level, or revisited?

(2) MCL 125.273 and MCL 125.203 state that the township and county zoning ordinances, respectively, “shall be based on a plan” that achieves various objectives. Similar language appears in MCL 125.581(2) (cities and villages). The nature and characteristics of the plan—e.g., whether it is a separate comprehensive plan—are not identified, nor is the ongoing role of the plan in connection with amendments or supplements to the zoning ordinance. Have the lack of clarity regarding the definition of the “plan” and the omission of a statutory test for consistency been problems? Should there be a statutory test for consistency, and, if so, what should that test be?

(3) MCL 125.583a (cities and villages), MCL 125.286 (townships), and MCL 125.216 (counties) address nonconforming uses. However, they do not authorize amortization, which is the phasing out of such uses over time, and do not deal with the question of abandonment of a nonconforming use. Nor do they provide a process for identifying or certifying the lawful or unlawful status of nonconforming uses. Have these omissions proved to be problems?

(4) MCL 125.283 requires the township zoning board to “periodically” prepare a report on the operations of the zoning ordinance including recommendations on the enactment of amendments or supplements to the ordinance. In practice, how often does this occur? By contrast, the county zoning commission is obligated to prepare such a report at least once a year under MCL 125.213. No requirement exists for municipalities. Should it?

(5) MCL 125.587 (cities and villages), MCL 125.294 (townships), and MCL 125.224 (counties) authorize, but do not detail, a procedure for enforcing the zoning ordinance. Has lack of a procedure been a problem?

(6) The three zoning enabling statutes do not describe or encourage innovative zoning regulations or use incentives to encourage certain types of development (other than an ordinance establishing a purchase of development rights program). For example, density or intensity bonuses are not discussed. Has lack of specific language resulted in lack of innovation?

(7) Under MCL 125.211, counties are required to submit adopted zoning ordinances to the Department of Commerce for review. Disapproval of a county zoning ordinance by the department “shall be based on noncompliance or conflict with either state or federal law or administrative rule or regulation, or a decision of a state or federal court.” Who is responsible for this review within the department and what kind of guidelines have been adopted? What has this provision accomplished in practice? Why doesn’t similar language appear in the city and village, and township enabling statutes? Does this language apply to amendments or supplements to the zoning ordinance? If not, should it?

(8) The municipal, township, and county zoning acts do not contain express procedures for applying for and receiving development or zoning permit that are ministerial or

nondiscretionary in nature, or implement discretionary decisions. How do local governments customarily handle this. Should a uniform system for the issuance of development permits be established? How about development that requires multiple permits?

(9) Are the standards in the MCL for the issuance of variances clear? Use variances appear to be authorized for cities and villages under MCL 125.585(9) (allowing a variance relating to the “alteration of buildings of structures, or the use of land.” Should this be changed?

(10) Since the MCL is silent on it, how is a “record” created under the zoning statutes for local governments in order to appeal decisions of the board of appeals?

(11) The MCL does not specifically define “aggrieved” with respect to taking appeals to the board of appeals, but does allow “a person having an interest affected by the zoning ordinance” to appeal decisions of the board of appeals in circuit court. The nature of the “interest affected” is not defined. How are these ambiguities resolved? Should the MCL be amended to clarify what this language means?

(12) Are the provisions on enforcement in the three zoning enabling statutes adequate?

(13) *Michigan Planning and Zoning*, 3d edition, states that, “in certain communities the [site plan review] process has come to be viewed as an opportunity for the municipality to impose, on an ad hoc basis, rules and requirements that do not appear in any law, and to extract concessions. . . It has also been used to delay the start of construction to amend the zoning ordinance to outlaw the proposed use.” Is this statement substantially correct? If so, what changes to the site plan review procedures (MCL 125.584c, MCL 125.387e, and MCL 125.216e are appropriate to curtail such practices?

(14) Are there any issues relative to judicial review of land-use decisions, whether legislative or administrative in nature, that should be addressed in a revision of the zoning statutes?

IV. Regional planning

(1) MCL 125.11 et seq. establishes authorizes regional planning commissions. The statutes:

- (a) do not describe specific types of regional plans;
- (b) do not describe a process for preparing and adopting regional plans; and
- (c) do not describe the impacts or effects of regional plans on member or nonmember local governments.

Have these omissions been problems?

(2) Should there be a procedure for reviewing large-scale developments with impacts that affect more than one jurisdiction?

V. Official maps

(1) MCL 125.51 *et seq.* is an “official map” act that allows the identification or reservation of specific proposed rights-of-way or sites for streets, parks, and other municipal improvements. Has this act been employed by cities and villages and have there been any challenges to it? Is this act useful as written? Could counties and townships benefit from a similar act?

VI. Land division and subdivision

(1) Provisions for subdivision review are spread among the municipal planning act, the township planning act, and the land division act. Should they be consolidated?

(2) Is the description of the contents of subdivision regulations in MCL 125.44 adequate to guide municipal planning commissions? Further, should the legislative body, as well as the planning commission, adopt the regulations?

(3) MCL 560.108 authorizes the division of land without subdivision. The provisions are the result of amendments enacted in 1997. What has the impact of these provisions been in practice?

(4) How long in practice does it take to subdivide land by following the procedures in the land division act?

(5) The land division act, in MCL 560.142, requires that, in order for a final plat to be recorded, a number of separate certifications must be submitted, including certifications by the county drain commissioner, the county plat board, the state treasurer, as well as the governing body of the municipality. Preliminary plats must be submitted, under certain conditions, to the state highways department, the state conservation department, the health department with appropriate jurisdiction, and local utilities, among others (MCL 560.113 to MCL 560.119). Each of these actions requires a separate submission and decision. Could these submission requirements be consolidated in a one-stop process, and, if so, how?

(6) Since impact fees are not expressly authorized in Michigan, how are off-site improvements financed?

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Appendix C: Advisory Group

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MSP Statutory Reform Initiative Advisory Group

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